



**OFFICER-INVOLVED DEATH
LEE DEANTE BROWN**

PUBLIC REPORT

CPRC Case No. 06-021

RPD Case No. P3-06-093-205

issued
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SECTION ONE: MAJORITY REPORT

Date of Incident: April 3, 2006

Location: Welcome Inn, 1910 University

Decedent: Lee Deante Brown

Involved Officers: Paul Stucker, Police Officer
Terry Ellefson, Police Officer

I. Preamble:

The finding of the Community Police Review Commission ("Commission") as stated in this report is based solely on the information presented to the Commission by the CPRC investigator, and details obtained from the RPD criminal investigation case files.

The Commission reserves the ability to render a separate, modified, or additional finding based on its review of the Internal Affairs Administrative Investigation. Because the Administrative Investigation contains peace officer personnel information, it is considered confidential under State law. Any additional finding made by the Commission that is based on the administrative investigation would, therefore, be confidential and could not be made public.

II. Finding:

By a vote of 6 to 1, the Commission finds that the officer's deadly use of force was within policy (RPD Policy 4.30 – Use of Force Policy) based on the objective facts and circumstances that we have been able to determine through our investigation.

III. Incident Summary:

RPD Dispatch received four calls from citizens complaining about the behavior of an adult African-American man. The man was reportedly seen jumping up and down on parked cars, exposing himself to the front of an apartment complex, and screaming and yelling.

Uniformed RPD patrol officers Paul Stucker and Terry Ellefson were dispatched to the calls. Stucker was flagged by a citizen to the front of the Welcome Inn at 1354 hours, and Ellefson arrived at 1356 hours.

Stucker was directed to the man, Lee Deante Brown, by the citizen. Stucker approached Brown and issued commands, which Brown did not follow. Several bystanders watched, and according to Stucker, some yelled and began to create a tense setting. Brown appeared to be either under the influence of drugs, or delusional.

Within moments of Stucker's arrival, Brown began to approach Stucker. Stucker fired a taser cartridge at Brown striking him with both darts. Brown fell to the ground from the taser shock.

Officer Ellefson arrived and approached Brown for handcuffing. Ellefson took a position on top of Brown's back and secured one cuff to Brown's left wrist. Brown then began resisting, and was able to get up and, by twisting his body, threw Ellefson from his back. Brown at one point was swinging his arms, with the unsecured right handcuff presenting a danger.

Both officers attempted to control Brown through contact tasing, but the tasing had minimal impact. The officers engaged Brown at least twice, and were unable to subdue him. Stucker used a baton to strike Brown.

According to the officers, Brown obtained Ellefson's taser, and pointed it at the officers. Ellefson subsequently shot Brown twice. Brown later died from his wounds. No witnesses saw Brown with a taser.

IV. Witness Accounts:

Witness accounts of the incident are generally consistent concerning Brown's erratic behavior, and the early moments of contact with the officers.

However, witness accounts vary concerning the moments immediately before the shooting. Both RPD and the CPRC's private investigator (BSG) located non-officer witnesses, in addition to the statements from officers that were provided to the RPD criminal investigators. In some cases, witness statements vary from what was told to RPD, and what was told to BSG.

Name	Distance from Brown (per BSG)	Saw Brown's Hands?	Saw Brown with Taser	Position of Brown at time of shots (BSG)	Position of Brown at time of shots (RPD)
<i>Ofcr. Ellefson</i>	>2'	Yes	Yes	(no statement)	<i>Lunging toward</i>
<i>Ofcr. Stucker</i>	>2'	Yes	Yes	(no statement)	<i>Squatting or sitting, trying to get up</i>
Kenneth Williams	>10'	Yes, waving	No	Standing	Standing & moving towards officers
Lynette Wilsey	>10'	Unsure	No	Standing	Lying down, trying to get up
Nicole Bacon	Inside room, 40' - 50'	Yes (saw handcuff dangling)	No	Sitting	On knees protecting himself
Racheal Nichols	Unk, inside room	"too far away"		(no statement)	Kneeling, ducking
Nicole Williams	50' - 60'	Yes, both handcuffed	No	(no statement)	Lying face down
Rachay Lear	60' - 70'	Yes, one was cuffed	No	(no statement)	Sitting, scooting and moving all around
John Gonzalez	70 yards	Yes, waving overhead	No	Kneeling	Sitting, or squatting

V. Forensic Evidence:

Forensic evidence included the swabbing of Ellefson's taser for DNA recovery. The swabbing did result in identification of DNA consistent with Brown's DNA.

However, the swabbing was not conducted, or recorded, in a manner to indicate from where the DNA was recovered. It is therefore unknown if the DNA was recovered from the trigger and handle or if from the terminal end consistent with Brown receiving a contact tase given by the officers.

No confirmed fingerprints of Brown's were located on the taser.

VI. Physical Evidence:

The Coroner recovered one (1) taser dart from the Brown's belt. A total of two taser cartridges, containing four (4) taser darts total, were fired. Three darts were not recovered.

VII. Applicable RPD Policy:

RPD Use of Force Policy, RPD Policy & Procedures Manual, Section 4.30, pages 4.30-1 – 4.30-11.

VIII. Standard for Commission Finding:

Preponderance of evidence.

IX. Rationale for Finding:

The Commission's finding is based on the following observations, analyses, and conclusions drawn after careful review and deliberation of information provided by the CPRC investigator and included in RPD criminal investigation case files:

1. The officers attempted to gain control of the situation by using increasing levels of force based on the conduct of Mr. Brown. (p. 3 – Summary of Events). Mr. Brown was increasingly resistive and combative by his conduct, which included physical resistance to the point that he threw Officer Ellefson from his back (p. 3) during the cuffing process and then used the cuff as a weapon (p. 10).
2. The officers used various tools provided in a use of force situation which included verbal commands, hand controls, taser, expandable baton, and control devices prior to the utilization of deadly force (p. 3 – Summary of Events).
3. When each officer deployed their taser on Mr. Brown, he did not exhibit the normal or anticipated effects. As a result, officers were not able to gain compliance or control of Mr. Brown. This would also reasonably contribute to an officer's fearful state of mind in order to gain compliance and control of an aggressive and resistant suspect.
4. Mr. Brown gained control of Officer Ellefson's taser and, by the statements of both officers (p. 7 and p. 9), handled it in a manner that would reasonably be perceived by Officer Ellefson as an instrument that would cause a threat of great bodily harm to either officer.
5. Mr. Brown was not wearing light colored clothing or anything that would present a contrast to a dark object in his hands. Therefore, a witness who is some distance away may not necessarily be able to easily discern a dark object in Mr. Brown's hand as would the officers,

who were in closer proximity. Based on the statements of both Officers, the Commission concludes that Mr. Brown was in possession of the taser at the time of shooting.

6. Based upon the statements of Officer Stucker that Mr. Brown was "either squatting or seated on his butt with his legs in front of him." (p. 19) and civilian witnesses who state that Mr. Brown was in a sitting position (p. 20); and looking at the downward direction of wound path of gunshot wound to the left arm (p. 14) and gunshot wound to right side of chest (p. 15), the Commission concludes that there is the greater likelihood that Mr. Brown was in a seated position at the time of the shooting. Based upon the statements of Officer Ellefson that "the suspect stood – kind of pushed forward and lunged forward directly at me with the taser," (p. 17) the Commission concludes that Mr. Brown, with taser in hand, was likely making motions to get up from his seated position.
7. Although neither officer has recalled making the statement, "Drop the gun." (p. 10 footnote) the belt recorder picked up the statement (Section C, p. 14, Line 1) which the Commission believes infers that Mr. Brown had something in his hand resembling a gun. The Commission observes that the taser, in this instance, based on its shape, color, and materials, resembles a handgun.
8. Officer Ellefson reasonably believed that Mr. Brown had possession and control of the taser.
9. The taser, in Mr. Brown's possession, reasonably presented a threat to Officer Ellefson and his partner, Officer Stucker, in such a way that Officer Ellefson or his partner could be disabled and, and as such, required the use of deadly force to overcome that potential.

X. Critique/Evaluation of Technical Aspects of Investigation:

1. DNA swab samples – The Commission believes that the manner in which the DNA samples were gathered did not provide the Commission with usable information and that multiple DNA samples should have been taken from different parts of the taser and provided to DOJ criminalist for examination.

Note: According to supplemental report included in RPD case files, a swab sample for possible DNA was taken from the handle and frame of the taser (Section F, p. 1). The CPRC investigator indicated that according to the DOJ criminalist investigator a single swab was taken from a taser and presented for examination (p. 13). The DNA analysis was inconclusive.

2. Follow-up questions/interviews – The Commission believes that the investigation should have included additional follow-up questions and/or follow-up interviews especially in instances where there may appear to be conflicting statements made by witnesses.

XI. RPD's Refusal to Clarify Technical Aspects of the Investigation:

The Commission comments with regret that the RPD refused to provide responses to CPRC follow-up questions. In August, 2007, the Commission submitted a list of questions to RPD. RPD replied with a blanket response that none of the questions would be answered, and that at least some of the additional information requested by the Commission would be answered in the confidential Administrative Investigation.

The Commission finds RPD's response regrettable for two reasons. First, the Commission accepted RPD's position that some questions asked, such as those requesting a credibility determination, were not the purview of RPD in a public report. However, some of the questions simply requested technical clarification, and distinctly were within RPD's ability to answer.

A sample of those questions:

Why were there no fingerprints and only traces of DNA on Officer Ellefson's Taser?

Had it been wiped clean prior to testing?

Why was Officer Ellefson's DNA not found on his Taser?

Were Officer Ellefson's fingerprints found on his Taser? If not, why?

Which analysis took place first, the fingerprints or the DNA? Does one compromise the other?

Why wasn't proper protocol followed, i.e., using one swab for each area of the Taser rather than one swab for all areas? Could this process be tantamount to wiping the Taser down?

If a Taser can only be used for contact tasing, can the Taser be cycled if no contact is made?

The Commission was tasked by the City to create a Public Report commenting on police actions, only to find that RPD was not a full partner in the City's task. The Commission believes that RPD's lack of cooperation in providing answers is detrimental to their efforts to provide a transparent process to the community.

SECTION TWO: MINORITY REPORT

Minority Report Regarding the Officer Involved Death of Lee Deante Brown By Commissioner James Ward, May 28, 2007

I. Introduction:

The general purpose of this minority report is to promote effective, efficient, trustworthy and just law enforcement in the City of Riverside, and to bring to the attention of the citizens, policy makers, and Riverside Police Department my finding regarding the law enforcement policies and practices as they relate to the Lee Deante Brown shooting. It is my hope and prayer this report will improve relations between those who enforce the law and the diverse populace they serve.

I feel compelled to submit this report because, in my view, the findings of my esteemed colleagues are not supported by the case facts. For example, the accounts of independent eyewitnesses, the trajectory analysis, the corner's report, DNA analysis, and conflicting officers' statements. These facts are conclusions in evidence that appear either to be completely dismissed, or glanced over and treated as inconsequential to the ultimate outcome of the shooting by the Commission's Report. The remainder of this report will attempt to address the above mentioned concerns. This report is not meant to be all inclusive. Its purpose is to address some of my major concerns with this officer involved shooting. All references to the case are drawn from the Community Police Review Commission report (DRAFT, CPRC No. 06-021; RPD Case No. P3-06-093-205) issued on Wednesday, May 9, 2007 at the CPRC meeting of that date, and to the minutes of the CPRC independent investigator briefings on 11/8/06, and 2/28/07.

II. Relevant Case Factors:

(1) A review of Officer Stucker's training record indicated he successfully completed the following relevant training topics: Dealing with the Mentally Ill, 5-20-04; S & K Laser Training Update, 6-22-05; and Dealing with 5150 Subjects, 6-22-05.

(2) Officer Ellefson successfully completed the following relevant training topics: M-26 and X-26 Taser Certification and S & K Defensive Tactics Update, 3-27-06; Dealing with 5150 Subjects, 3-28-06. Officer Ellefson completed the later training on March 28, 2006. Mr. Brown was shot on April 3, 2006; one minute and 7 seconds after Officer Ellefson's arrival at the scene.

(3) Rachael Bacon, age 19, a witness to the shooting, stated that Mr. Brown appeared to be disoriented during his struggle with the police. Her statement further states her observation that Mr. Brown "had no idea what was going on." (See Riverside Press Enterprise, Tuesday, 4-4-06). This observation is from a 19 year old who has had no formal training with the mentally ill. While the untrained Ms. Bacon was able to make this distinction, trained officers could not recognize that Mr. Brown's disoriented, irrational, and/or incorrigible behavior was a result of his mental incapacity.

(6) Tactical error: Officer Ellefson told Officer Stucker he was going to hand cuff Mr. Brown and for Officer Stucker to turn off his taser, see page 8. According to Marc Fox, of the San Diego Regional Law Enforcement Training Academy, officers are generally trained that the assisting officer go hands-on and do hand cuffing while the taser is being cycled, see page 6, last paragraph. If both probes are still imbedded in the subject, then this is the best method according to Fox. There is little chance that the officer will encounter a shock and the subject will remain incapacitated during the handcuffing. If the cycle is stopped, a violent subject is likely to immediately start fighting again. Officers must be held accountable for tactical actions that do not follow training protocol and ultimately lead to situations where officers feel compelled to shoot their way out of.

(5) Of the 24 civilians interviewed in this shooting, six said they saw the shooting. Of these, none of them saw Mr. Brown with the taser in his hand. (See page 4, last paragraph). Despite conducting fingerprint and DNA analysis, there is no conclusive evidence linking Mr. Brown with the taser.

(6) Four civilian witnesses who claim to have seen the shooting state that Mr. Brown was in a sitting position at the instant of shooting. (See illustrations on page 19.)

(7) Officer Stucker was asked a question, "In what position was Brown shot?" Answer: "...he was either squatting or seated on his butt with his legs in front of him". (See page 11, question #2.) Note, it is difficult to squat with your legs in front of you. The Corner's report describes wounds consistent with baton strikes to the legs of Mr. Brown. Officer Strucker acknowledged delivering baton strikes in question one, page 11. (See section E, page 6, #8 and #9, Autopsy Protocol, the Corner's report.)

(8) Office Ellefson was asked the question: "In what position was Brown shot?" Answer: "...the suspect stood...lunged directly at me with the taser." (See page 11 question #2.)

(9) After shots were fired, Officer Stucker's first command to Mr. Brown was "hands behind your back" (Section C, page 7, line 6 bottom), Officer Ellefson's first command was "stay down" (Section C, page 7, line 8). Does this sound like they are concerned about a taser? The first mention of the taser was at 3 minutes and 33 seconds on Officer Stucker's belt recorder, 56 seconds after the shooting. If one would warn his/her partner about a hand cuff, wouldn't one

do so about a taser, especially if the threat is to the point of escalating to the use of deadly force? Note that all reference to the taser is officer-to-officer, not one command is made to Mr. Brown about the taser. For example, (a) "He has the taser in his hand" (see Officer Stucker's belt recorder at 3 minutes and 33 seconds); (b) "Where is your taser?" (see Officer Ellefson's belt recorder at 5 minutes and 37 seconds); (c) "He picked up the taser", (see Officer Ellefson's belt recorder at 6 minutes and 58 seconds); and (d) "He came up with the taser, I shot downward," (see Officer Ellefson's belt recorder at 8 minutes and 30 seconds).

(10) From the case book, Officer Ellefson said, he drew his duty weapon as he was stepping backwards. From a distance of two feet, he fired two rounds from the hip position towards Mr. Brown's center body mass. Ellefson said "it was a quick draw and shoot situation without time to align his gun sights on the target." (quote from page 9 under item 3.) Officer Ellefson later stated, as noted on his belt recorder, that at 8 minutes and 30 seconds " he [Brown] came up with the taser, I shot downward". At 11 minutes and 30 seconds, Ellefson stated "two shots trajectory downward." (see page 10, SUMMARY OF BELT RECORDER STATEMENTS:)

(11) TRAJECTORY ANALYSIS (See page 16.): According to Doreen DeAvery of Applied Graphic Science, based on the trajectory of the two bullets, it is most likely that Mr. Brown was sitting or squatting.

(12) AUTOPSY (See page 14 and 15): "The direction of the wound path with respect to standard anatomic position is left to right back to front and downward." (SUMMARY: Item 3 under gun shot wound to the left arm. Also see wounds to right and left side of chest.)

(13) Enhanced belt recorders were made available to the CPRC after Officer Stucker signed his belt recorder on 2-21-07 and Officer Ellefson signed his belt recorder on 2-27-07, respectively. However the statement "drop the gun," was discovered by the RPD prior to a briefing on 11-8-06 by our (CPRC) special investigator. (See CPRC 06-63 and CPRC 07-24 and 25).

(14) Some 10 months after the shooting, Officer Stucker and Officer Ellefson signed their enhanced belt recorder indicating that the content was complete and accurate. However, as noted above, the statement "drop the gun," was circulated prior to 11/8/06. Yet, according to both Officer Stucker's and Officer Ellefson's signed belt recorders; neither officer made nor heard the statement. See section E, page 11 and page 14, line 1. The police department credits Officer Ellefson with this statement.

(15) In response to a request for a transcribed copy of Officer's Ellefson's belt recorder, Dr. Payne received an email from Captain Mike Blakely on 11/17/06 indicating, "no transcription of Officer Ellefson's belt recorder existed." However, the statement "drop the gun," had been shared by RPD with the FBI investigator from Los Angeles (See email in case files CPRC 06-63 and CPRC 07-24 and 25).

III. Critical Questions:

(1) Was Mr. Brown sitting or squatting when first shot? I believe the evidence is clear that Mr. Brown was on the ground when shot. My belief is supported by the civilian eyewitness accounts, Officer Stucker's account, the trajectory analysis, the corner's report, and Officer Ellefson's account when he stated he fired in a downward trajectory. How much of a threat can Mr. Brown be on the ground with a taser that can be used only for contact tasing?

(2) Did Mr. Brown ever have the taser in his hand or under his control? The evidence regarding the taser is not as clear. But in view of the eye witnesses, the DNA and fingerprint analysis, and Mr. Brown's state of mind, it is doubtful that he would be able to focus his attention on the taser and cycle it within the six seconds between cycle 6 and 7. What is extremely troubling to me in

this shooting is the fact that I can find no conclusive evidence linking Mr. Brown to the taser, therefore, I cannot eliminate the possibility that Mr. Brown was shot while on the ground with nothing in his hands...just a pair of handcuffs dangling from his wrist. Several independent eyewitnesses state that this is in fact what happened. The only information contrary to the information above is the officers' statements (see next heading).

(3) Several critical questions remain regarding the transcribed belt recording of both officers. Officer Stucker's transcribed belt recorder was included in the criminal case book when received on 10-6-06. Officer Ellefson's transcribed belt recorder was not received on that date----why? Who maintained control of Officer Ellefson's belt recorder? What assurance do we have that the tape was not altered? Why didn't Officer Ellefson claim the statement? In response to Detective Cobb's question number four, why would Officer Ellefson give Mr. Brown the command to get on the ground, if he had just given him the command to drop the gun, shot him, and Mr. Brown still has the weapon? Who discovered this statement on Officer Ellefson's recorder? When was it discovered? How was it discovered? Why was an addendum not prepared and made a part of the criminal case file? Who shared this information with the FBI investigator? Why was this person or persons not just as concerned with sharing this information with the CPRC? Why was the statement "drop the gun," not picked up by Officer Stucker's belt recorder? If you read the transcription of Officer Stucker's belt recorder, page 6, lines 18 through line 10, and then read Officer Ellefson's transcription of his belt recorder, page 15, lines 15 through line 7, you will find the same information on both recorders with the exception of the statement "drop the gun." That statement is only heard on Officer Stucker's recorder---why?

IV. Officer Credibility Issues:

Note that when I speak of credibility issues, I am only referring to a narrow time window consisting of what was taking place just before and during the shooting. You will notice the officer and eyewitness accounts are very much consistent up to the immediate events surrounding the shooting. It is that narrow window of the shooting where the accounts parted company. I will attempt to address this narrow window:

(1) Officer Ellefson's credibility issue:

Question: "In what position was Brown shot?" Answer: "...the suspect stood...lunged forward directly at me with the taser." (See page 11.)

See Officer Stucker's answer to the same question. "...he was either squatting or seated on his butt with his legs in front of him." Both can not be true. However, the evidence supports Officer Stucker's account. Officer Ellefson later states that he shot in a downward trajectory, which makes it impossible for Mr. Brown to be standing at the time the shots were fired, given the wounds to the chest and the downward trajectory. These conflicts in testimony, in the Corner's account, and in Doreen DeAvery's analysis, add up to a serious credibility problem.

Officer Ellefson states that he heard officer Stucker shout a warning regarding the hand cuffs being a potential weapon. From Ellefson's belt recorder we know this happened 56 seconds (0:56) into this confrontation. (See page 10.) Both shots were fired at 1 minute and 7 seconds. If we are to believe Officer Ellefson's account, we would have to believe that between 56 seconds and 1 minute and 7 seconds, Officer Ellefson contact tased Mr. Brown, lost control of his taser, saw it between Mr. Brown's feet, Mr. Brown then gained control of the taser, stood up from a squatting position, and thrust the taser toward him within easy striking distance. Officer Ellefson stopped, backed up, and then fired two rounds from his duty weapon all within 11 seconds. If shot sitting or squatting, then Mr. Brown must have set back down in this time interval before the shots were fired. Note, the taser could only be used for contact tasing at this time. When officer Ellefson took two steps backwards he already was beyond contact range.

Officer Ellefson acknowledges cycling his taser six times. One when initially fired, two with the taser darts, plus 3 contact tasers. He heard Officer Stucker shout, "Watch that cuff, he's swinging that cuff," followed by, "It's a weapon." We know from the facts that the watch out for the cuffs happened 14 seconds before shots were fired. We know from the facts that officer Ellefson's Taser was cycled seven times. If Officer Ellefson lost control of the taser after the 6th cycle, which was at 13:49:11, then Mr. Brown would have had to gain control and cycle the 7th cycle at 13:49:17, a time span of 6 seconds. Are we to believe that Officer Ellefson acknowledged Officer Stucker's warning, applied an additional contact tase, the taser was knocked from his hand, he saw it between Mr. Brown's feet, and Mr. Brown gained control of the taser, stood and lunged toward him, all within 6 seconds. There is absolutely no conclusive evidence that Mr. Brown ever had control of the taser. The only evidence that would have us consider this possibility is the officers' statements which do not support eyewitness accounts, evidence, or DNA and fingerprinting analysis.

It is evident from the dispatch call that Mr. Brown was suffering from a drug-induced or mental episode that severely distorted his perception of reality. See pages 2 and 3 of the case book, the minutes of 11/08/06, page CPRC -06-60, -64 and -65 and the minutes of 2/28/07, CPRC -07-11, -12, and -31. However, these officers would have you believe that as soon as Officer Ellefson lost control of his taser, Mr. Brown suddenly regained control of his mental facilities and the taser, and was able to demonstrate its proper use, jump up, attack, and sit back down, all before the shots were fired.

V. Officer Stucker Credibility Issues:

Statements from case book (see page 7, and OFFICER STATEMENT SUMMARIES, pages 22-24).

Officer Stucker was aware that his taser was no longer able to deliver a shock because he had seen one of the probes loose, dislodged, and on the ground. Officer Stucker removed the cartridge from his taser and moved in on Mr. Brown to deliver a contact tase. During this maneuver, Officer Stucker suddenly received a taser jolt from a probe that had been lodged in his left hand. Officer Strucker backed away from the struggle and turned his back attempting to break free of the taser. When Officer Stucker turned back around, he was recovering from the taser shock and saw Mr. Brown with Officer Ellifson's taser in his right hand. See page 7. The evidence does not support this account by Officer Stucker. Officer Stucker's belt recorder indicates at 2:22 he made the statement, "Watch the cuff; he's swinging that cuff, it's a weapon." This was 14 seconds before shots were fired. See belt recorder page 10. If you go to Officer Stucker's complete belt recorder, see Section C, page 7, you will find the above statements on lines 18 and 19, and a subsequent statements on lines 21 and 24 inside the 14 sec interval mentioned above. My point is the record does not substantiate Officer Stucker's claim of being disengaged in the struggle prior to the shooting. Officer Stucker also claimed he had a taser probe stuck in his left hand. However, if we look at the Corner's report, section E, page 1, items IV and V, this report confirms that Mr. Brown had three cutaneous burn marks consistent with taser darts. Two are described in item IV and one in item V. Also mentioned in Section E, page 3, there is a taser dart with a short length of copper wire extending from it imbedded in Mr. Brown's blue belt on the left side. Question: If three taser probes are found in evidence on Mr. Brown's body and one in his belt, where did the taser probe come from that Officer Stucker claimed was embedded in his hand? I find Officer Stucker's account truthful for the most part. But this account gives the appearance of trying to protect Officer Ellefson rather than being truthful. This presents a serious credibility problem.

Question: If this shooting is in policy, why are the officers being untruthful?

Answer: Because these Officers know the explanations must be in policy even if their actions were not.

VI. Credibility Issues of the RPD Investigation:

In this investigation I find many conflicting issues; for example, between citizen eye witnesses and the officers, and in conflicting officer accounts. I find no attempt on the part of the RPD investigation to resolve these discrepancies. Why do the officers' accounts differ so greatly? Why didn't the RPD investigators address these discrepancies? Greater attention needs to be given to whose account is the more correct and whose is incorrect. This really goes to the integrity of the officers' actions and the Department's position as to whether this was a defensible action on the part of the officers, or a bad shoot that requires more extensive officer training on how to handle this type of situation. Ignoring the problem of how our officers recount controversial encounters ultimately goes to the credibility of the RPD and its reform efforts. This investigation gives the appearance of justifying all officer encounters regardless of whether the officers are being truthful. The record shows the RPD investigators asking leading questions, and making leading statements followed by leading questions as indicated for example in questions #4 from Detective Medici and from Detective Cobb, see page 12.

RPD inability and/or unwillingness to do a complete investigation leads one to believe that the only objective of the RPD is to protect its officers. The leading questions tend to suggest to the officers what to say to protect themselves, rather than to ask questions to search for the truth.

The issue of the "drop the gun" statement found on Officer Ellefson's belt recorder is not mentioned in the criminal case book. However, according to our independent investigator, that statement was brought to the attention of the FBI investigator from LA who was investigating the possibility that Mr. Brown's civil rights were violated, see 2/28/07 minutes, page CPRC-07-24 and -25. It is reported that the FBI finding was that Mr. Brown's civil rights were not violated and the FBI finding was in part based on this alleged statement from Officer Ellefson's belt recorder. This information according to the FBI investigator came from some one in the RPD, but I find no mention of it in the criminal Casebook. If RPD is using information off the record and not in evidence to influence a civil rights investigation, then I find this extremely troubling. Note this statement could not be heard from the tape run at its normal speed. The tape had to be slowed down tremendously to hear anything like "drop the gun". Both our investigator and the FBI investigator missed it when they listened to the tape, (see 2/28/07 minutes CPRC-07-25). But someone from the RPD brought this statement to the attention of the FBI investigator who subsequently brought it to our special investigator's attention when discussing this case.

At our May 9, 2007, special meeting, I mentioned Officer Ellefson's not claiming the statement, "Drop the gun." When my fellow Commissioners started working on the rationale for their finding, they acknowledged this statement was not made by either Officer, and started looking for information to support their findings. In my view, this a classic case of rendering a finding, then seeking supportive information, rather than analyzing the data and then making a decision on their analysis. If this statement was not made by either officer, maybe it was directed to Officer Ellefson because he is the only one we know for a fact that had a drawn gun in his hand.

VII. DNA Analysis:

The shoddy police work is never more in evidence than with the DNA analysis by Technician T. Ellis. According to Dr. David D. Wu (DOJ Senior Criminalist), he did not know from what part of the taser the swab was taken. He would generally expect to see swabs from various parts of the taser (the grip and frame, trigger, and probes). See Dr. Wu's report page 13. T. Ellis took a single swab sample for DNA analysis from the handle and frame of the taser. The DNA analysis reports DNA types from at least two DNA donors at a low level, indeed at the very low end of a measurable scale in which the analysis machines can sense its presence. From this analysis, Mr. Brown was included as a potential DNA donor, (see Section F, Page 3).

Apparently, the analysis did not give a conclusive test for the DNA of any identified individual (see T. Ellis report, Section F, page 1). In view of the fact that Mr. Brown was contact tased several times, that Officer Ellefson lost control of the taser, that Ellefson saw it land between Mr. Brown's feet, that Mr. Brown was not wearing a shirt, and that the taser could have made contact while falling, we find more than one way Mr. Brown's DNA could have ended up on the taser. Anyway, the DNA evidence is not conclusive that Mr. Brown had the taser in his hand. The fact that Mr. Brown's DNA, if actually found, was at the very low end of a measurable scale calls for concern. The fact that Officer Ellefson handled the taser but his DNA was not found on the taser also calls for concern. See Dr. Wu's statement, page 13 last paragraph. However, I question the fact that the very low end of scale DNA detection, which is used to include Mr. Brown as a potential donor, is sufficient to expect that Brown's contact eliminated all of Officer Ellefson's DNA. This DNA analysis is not conclusive and poses more questions than it answers. Since this DNA could be the evidence presented to exonerate the officers, wouldn't you think the RPD would get the analysis right?

If the shooting of Lee Deante Brown was within policy, then I must conclude that the RPD's policy 4.30 must be one of the policies the Atty General had in mind when he conducted his civil investigation of the RPD, which states:

Page 3.3, Number 27 and 28; and Page 4, lines 1-8

"Certain of RPD's administrative policies and procedures are currently inadequate to prevent violations of the California Constitution and the California Statutory Law that may be committed by its officers in the performance of their duties. The inadequacy of those policies and procedures substantially impairs the ability of the RPD to meet its responsibility to uniformly and adequately enforce the law, and has resulted in and will continue to result in violations of the California Constitution and California Statutory Law. Where the RPD's policies and procedures are adequate, the RPD has failed to adequately and properly implement those policies, and procedures, and such failures has resulted in and is likely to continue to result in violations of the California Constitution and California Statutory Law."

If this is true, we could have Officers who have violated the law, but not RPD policies and practices.

VIII. I find the shooting of Lee Deante Brown is inconsistent with the policy of the RPD 4.30 in the following areas:

(1) *"The purpose of the policy is to provide guidelines as to when physical force may be employed and the kind of physical force the law will permit. However, guidelines can not cover every possible situation presented to officers, therefore, officers must be reasonable in their actions."*

I do not believe the law permits the use of lethal force to disarm a suspect with a crippled, less than lethal weapon (the taser), nor do I believe it is reasonable.

(2) Policy goes on to read, *"...officers must have an understanding of, and true appreciation for the limitations of their authority"*. In my view, the shooting is outside the limits of authority.

(3) The department goes on to state that *"...it recognizes and respects the sanctity of human life and dignity."* I find no such respect in the shooting of Lee Deante Brown.

(4) The department policy goes on to say *"...whenever force is used the officer's defensive action must be in response to the suspect's action"*. I find no action in Mr. Brown's shooting that would justify lethal force.

IX. Summary and Conclusion:

Considering the facts as outlined in our investigator's report, and as addressed in this report, it is clear to me Mr. Brown was sitting on the ground when shot. The fact that Mr. Brown was contact tased many times could account for him being a potential DNA donor but not indicative of the taser being in his hand. The evidence does not support a scenario where the taser is in Mr. Brown's hand. Officer credibility issues are confusing and extremely troubling in this case. The failure of the RPD investigation to address these conflicting issues is even more troubling. In order to rule this shooting within policy, one would have to ignore the facts, believe untruth, give no consideration to independent citizen witnesses, overlook shoddy police investigation, and make their case on officer perception. But how can one rely on perception when one can not rely on the truthfulness of the Officers?

If we, the CPRC, accept the officers account of what transpired on April 3, 2006, and accept the RPD investigation as complete, truthful, and objective, then in my view we are a dismal failure and our task to provide the community with transparency, as it relates to RPD policy and practices, has become nothing more than another layer of bureaucratic darkness. Instead of becoming part of the solution, we have become part of the problem.



James Ward, Commissioner
CPRC
May 28, 2007

Attachments:

CPRC minutes dated 11/08/06
CPRC minutes Dated 2/28/07
CPRC Brown conclusion page as of 7/23/07
Press Enterprise article dated 4/4/06
Email from Mike Blakely dated 11/17/06
Officer Stucker's training records
Officer Ellefson's training records



**REGULAR MEETING
MINUTES
for
Wednesday, November 8, 2006
7th Floor Small Conference Room
and
Art Pick Council Chambers
Riverside City Hall, 3900 Main Street**

CASE REVIEW – 4:00 P.M.

1) Case Review Roll Call

Brewer	Davidson	Garcia	Arreola	Ward	Pearcy	Corral	Castro	Quinto
✓	✓	A	✓	✓	✓	✓	✓	A

✓ = Present A = Absent

Staff: Dr. Pedro Payne, Executive Director; Phoebe Sherron, Sr. Office Specialist

2) Public Comment

Mr. James Teuschl addressed the Commission regarding his case.

3) Commissioner Comments

There were no commissioner comments.

4) Closed Session – Case Reviews

Pursuant to Government Code Section 54957, the Commission adjourned to Closed Session at 4:05 p.m. to discuss issues pertaining to PUBLIC EMPLOYEE PERSONNEL MATTERS.

	CPRC CASE NO.	RPD CASE NO.
1)	04-062	PC-04-237-038
2)	06-012	PC-06-076-162

The Commission recessed at 5:30 P.M. to reconvene in the Council Chambers.

OPEN SESSION – 5:30 P.M.

The following proceedings have been digitally recorded.
For copies, please call the CPRC office at (951) 826-5509.

Chairman Davidson led in the Pledge of Allegiance.

REGULAR MEETING – ROLL CALL

Chairman Davidson asked Ms. Sherron to confirm commissioner attendance.

Brewer	Davidson	Garcia	Arreola	Ward	Pearcy	Corral	Castro	Quinto
✓	✓	A	✓	✓	✓	✓	✓	A

✓ = Present A = Absent

Staff: Dr. Pedro Payne, Executive Director; Phoebe Sherron, Sr. Office Specialist

5) Public Comments

Dr. Ron Bailey revisited his question: "Do we really know how to police the medically and psychiatrically impaired?" He cited the Lane, Argow, Rabb, and Brown cases as the "backdrop" for these issues. He said he was interested in how far the Commission has pursued this.

6) Hill Officer-Involved Death Case

CHAIRMAN DAVIDSON – Okay. We'll go to Item Number 6 and that is the first briefing from RPD on the Joseph Hill incident.

CAPT. JAMES CANNON – Dr. Payne, members of the Commission, and the public – good evening. I'm Captain James Cannon, commander of the centralized investigations division of the riverside police department and I'm tasked with providing you a briefing on the Joseph Darnell Hill incident, which occurred on October 19th of this year.

First, we extend our sympathies to the Hill Family. As you know the investigation has begun and the police department is working very closely with the District Attorney's Office and the Sheriff / Coroner. Our detectives are working very hard to track down the leads, review all the evidence and interview witnesses, etc. As always, the criminal investigation is reviewed at multiple levels, up to the office of the chief of representative, and submitted to the District Attorney's office for review. At the conclusion of this briefing, I will not be able to entertain any questions beyond my text in order to preserve the integrity of this investigation.

On the morning of Thursday, October 19th, 2006, Officer Jeffrey Adcox was on routine patrol in the Arlanza area. Officer Adcox saw a red 1997 Toyota 4-door being driven by Mr. Hill. As soon as Hill saw Adcox, he pulled his vehicle to the curb and stopped. Officer Adcox, thinking it odd behavior, does not contact Hill. Officer Adcox continued patrolling the area, when he sees Hill a second time. Hill again looks at Adcox and quickly pulls to the side of the road and stops. Officer Adcox pulled along side or parallel to Hill and asked him if he had a valid drivers' license. Hill said that he did, so Officer Adcox was...although Officer Adcox was concerned about Hill's unusual actions, he is not sure that he has enough probable cause at that time to legally stop him. So Officer Adcox drives off and continues to patrol the area.

A short time later, Adcox observes the vehicle being driven by Hill. The vehicles are driving toward each other when Hill suddenly makes an illegal U-turn and then fails to stop for a posted stop sign. Due to the traffic violations and Hill's previous actions, Adcox makes an enforcement stop on Mr. Hill. At 10:17 hours, Officer Adcox makes the stop. Hill is the lone occupant and begins to argue with the officer. Officer Adcox calls for an assisting officer and Traffic Officer Giovanni Ili responds.

Upon arrival, Adcox briefs Ili about the circumstances and behavior of Mr. Hill. Officer Adcox positions himself on the driver's side of Hill's car and Ili positions himself on the passenger side. Hill is recontacted and asked to exit his vehicle, which he does. Officer Adcox conducts a cursory pat down search on Hill and asks him to sit

on the curb line of the roadway. Hill sits down, however, he continues to argue and refuses to cross his legs and extend them in front of him.

During the encounter, Hill is very belligerent, which causes Ili, the senior officer, to have concern. Ili tells Adcox to put Hill in the police car for their safety. Adcox agrees and he asks Hill to place his hands behind his back and stand up, which he does. Adcox grabs Hill's hands and assists Hill to his feet.

As Hill comes to a standing position, he immediately pulls free from Adcox and attacks him. Ili comes to the aid of Adcox and grabs Hill, at which time all three men fall to the ground with Ili ending up in a seated position with Hill on top of him. Adcox ends up behind Hill, trying to pull him off of Ili, but he is unsuccessful. During the struggle, Ili can feel his gun belt being pulled on by Hill. Believing that Hill is trying to take his gun, Ili traps his gun and holster with his right hand. Simultaneously, Ili feels the left side of his gun belt being pulled on and becomes concerned about his Taser. Ili releases his hold on Hill with his left arm and attempts to secure his Taser. As he does this, both Adcox and Ili see that Hill is holding the Taser in his left hand. Hill is trying to manipulate the safety on the Taser, which is pointed at Ili. Fearing for the safety of Officer Ili, Officer Adcox fires his duty weapon, striking and killing Mr. Hill. The officers radio broadcast "shots fired" and request medical aid for Mr. Hill. Mr. Hill is transported to Parkview Hospital via ambulance and is pronounced deceased at 11:15 hours.

Independent witnesses and physical evidence support the facts in this case so far and the investigation is continuing.

That concludes my briefing.

CHAIRMAN DAVIDSON – Thank you for that report.

I just got a request from Michael Morales to speak on, I guess, one of the agendized items, but it isn't on here. Michael, do you know... Mr. Morales, do you know what agenda item you want to speak on?

Unintelligible speaking....

CHAIRMAN DAVIDSON – Yeah, we'll go ahead and take it now. Come on up, Mr. Morales, and your welcome to speak.

MR. MICHAEL MORALES

Mr. Morales said that he had lived in Riverside for the last 15 years. He said he is "very fond of the police department that we have in this Little Town, USA" and believes that 90% of the officers, 90% of the City employees are good people. He expressed concern over "the other 10%" who only work here and have no connection to the City or its citizens.

7) Brown Officer-Involve Death Case

CHAIRMAN DAVIDSON – Thank you, Mr. Morales.

We will now go on to the CPRC investigator's report on the Brown incident. Butch Warnberg, are you there? Come on up, Butch.

BUTCH WARNBERG – Thank you, sir. Good evening, ladies and gentlemen. This is the summary report for the Lee Dante Brown shooting that occurred back in April of 2006. We've elected to actually do this report in a somewhat different fashion than we normally do. We're gonna do it in two parts and as we kind of go through Part 1, you're gonna understand it's a continuing investigation. You're gonna understand why it is a continuing investigation and there needs to be some additional work that is been done. That's all in an effort to clarify and harmonize some of the inconsistencies and things that have occurred in this shooting for the Commission.

To being with, Mr. Brown was a 31-year-old resident of Riverside, California at the time of his shooting death. Mr. Brown was living in a space that was provided by his fiancé's parents on 4th Street here in Riverside.

Mr. Brown had a moderate criminal record. Jail records show that Mr. Brown had been arrested twice in the past month for...uh, prior to the shooting on suspicion of drug-related charges, under the influence, possession of fake identification, things of that nature. Mr. Brown had been arrested and convicted, pled guilty to a

burglary charge in 1997 and he spent a year in jail.

Mr. Brown was unemployed. He had been diagnosed with a mental disorder described as paranoid schizophrenia. He was prescribed various prescription medications for that disorder. Mr. Brown was divorced and had two young daughters.

Part of the report that is reported as versions of events by police and media sources was derived from Capt. Cannon's statement here to the CPRC back in April, as well as the summary report by the lead detectives in the case.

We did a quick analysis of the citizen complaints that led up to the contacts by the two officers; Mr. Brown. And in the early afternoon hours of April 3, RPD Dispatch received a total of six citizen complaints via 911 telephone communications. The telephone calls came from citizens in various locations between Loma Vista Apartments and the Welcome Inn at 1910 University Avenue in Riverside. The driving distance between those locations is about 524 yards, so he generated a lot of activity in a very quick period of time in the early afternoon hours of that date.

Each of the citizens reported, that called in, they reported behavior on the part of Mr. Brown that included possible drug use, acting crazy, public nudity, screaming profanity, diving on cars in traffic and minor property damage to vehicles. No felony activity was reported and no reports of weapons were mentioned.

When Officer Stucker initially drove into the parking lot of the Welcome Inn and contacted...uh, he was contacted immediately by one of the witnesses in the case, a Kenneth Williams, Williams, uh, Witness Williams pointed out to Mr. Stu...uh, to Officer Stucker, uh, Brown, and then made some comments, gave him some more information, offered a personal opinion that he was on some kind of drugs. Brown apparently was sitting on the pavement when Officer Stucker arrived in the parking lot and he was waving at Officer Stucker to leave – leave the area – in some fashion. Brown was wearing dark pants with no shirt. Officer Stucker stopped and prepared to exit his car. Brown got up and he left his position and went into a blind corner in the southwest corner of The Welcome Inn where he put himself flat up against the wall.

Officer Stucker took his Taser out of his vehicle. From the reports and things he had received, the individual had been exhibiting some pretty bizarre behavior. So as he approached Mr. Brown, he approached him with his Taser sighted on Mr. Brown and began giving him very audible and understandable commands for him to put his hands at his side, put them up on the wall. It was...it was very clear that Mr. Brown was noncompliant and was not going to do exactly what Officer Stucker was telling him. However, Officer Stucker was by himself. His nearest cover was at least...almost a minute away at this point in time.

Following several commands by Officer Stucker for Mr. Brown to present his hands in a clear fashion, he turned and faced Officer Stucker. Officer Stucker could see that he had no shirt on and nothing in his hands, but he was still noncompliant. He took a step toward Officer Stucker and Officer Stucker perceived that as a threat and deployed his Taser, striking Mr. Brown with the two Taser probes.

From that point, there were a number of witnesses, both in the parking lot, across the street, that observed the events that took place following this incident. The first witness, Offic...or uh, John Gonzales, was actually working in the Budget Inn, which is across the street from the...from the Welcome Inn. And if I can figure out quickly how to...

This photograph that you're looking on right here is an actual aerial photograph taken by the RPD following the incident, of the Budget Inn...or excuse me, of the Welcome Inn at 1910 University. This...this area right here is essentially where the shooting occurred and where the contact between the officers and Mr. Brown happened.

This is a photograph taking...taken by RPD following the incident showing the position of Officer Stucker's car and the uh...excuse me...This is the position that Mr. Gonzales, the witness, was standing at the Budget Inn across the street on the second floor, and observed the activity. Mr. Gonzales describes the event, he describes a number of phases of this struggle that occurs. His attention was drawn to the incident by Officer Ellefson arriving at the scene with his siren. He watched the fight, describes the phases of the fight and essentially says that, at the end, Mr. Brown was seated on the ground when Officer Ellefson stepped back and shot him. He, he could see the...this baton strikes by Officer Stucker and he could also see the handcuff, the single handcuff, dangling from Mr. Brown's wrist from this position.

This is a diagram of the Welcome, er... of the Welcome Inn showing the position of the two police cars and Mr. um... Mr. Gonzales' position clear across the street here, almost some 270 feet away.

Another witness, Rachay Lear was walking on University Avenue, saw the activity at the street, crossed the street, stood in the driveway of the Welcome Inn somewhere in this position right here, and watched the activity. Once again, she describes the...

CHAIRMAN DAVIDSON – Butch, excuse me... You keep pointing out "in this position here," but is something supposed to be lighting up on this?

MR. WARNBERG – I'm sorry you cannot see the laser on your screens...

CHAIRMAN DAVIDSON – No, I can't...

EXEC. DIR. PEDRO PAYNE – No, the laser won't appear, unfortunately, on the commissioners' screens.

CHAIRMAN DAVIDSON – Could you possibly describe that to us so that we can understand what you're saying?

MR. WARNBERG – Okay. I apologize for that.

Uh, this Rachay Lear, she uh...she was walking on the opposite side of University Avenue, saw the activity over there with the police officers, crossed the street and stood in that driveway on the uh...it would be the south...uh, the first driveway right behind the police car there and watched the events of the, uh...of the fight. She, again, describes the position of Off...or uh, Mr. Brown when he was shot as in a sitting or on the ground position with nothing in his hand.

Rachel Nicole Bacon was a resident of the Welcome Inn, living there with her mother and sisters, residing in...in Apartment...uh, I believe it was Apartment #14...was, uh...had observed the...stepped out of her apartment, looked down and observed the various phases of the struggle between Officer Stucker and Officer Ellefson. She also describes the ultimate events at the conclusion of the struggle as Mr. Brown sitting on the ground and being shot with nothing in his hand and claims that she had seen the...um...the handcuff dangling from Mr. Brown's wrist.

Kenneth Williams is the witness who actually contacted Officer Stucker as he entered the parking lot and he took a position in front...in front of Rooms 8 and 9, where he watched...watched the events from that angle. He is the one witness that says that Mr. Brown was actually on his feet and moving toward the officers at the time that he was shot. He said that he could see the handcuff on one wrist of Mr. Brown's arm, but that he had nothing in his hand.

Officer Paul Stucker...we took a...we prepared a summary of his statement, which is provided on the summary report and Officer Stucker activated his belt recorded as soon as he contacted Mr. Brown in the corner, in the southwest corner of the building, so there is recorded conversation. You can hear...you can hear many of the events and the sequences of the struggle between the officers from that belt recorder.

Officer Terry Ellefson is the same. A summary of his statement is provided on the summary report and we prepared an analysis of the statements by the officers with key questions with regards to what was happening when shots were fired as stated by Officer Stucker and Officer Ellefson. Also, other officers that were at the scene or came later, and Capt. Cannon's statement as he provided it here to the CPRC.

As you can see in that analysis of those various statements, there's some inconsistency and discrepancy with regards to positioning, what was happening at the time of the shooting between the various statements of the officers, Capt. Cannon, and the civilian witnesses.

We did the same thing with asking, um...the position that Mr. Brown was in with regards to the statements, as provided – who was Mr. Brown pointing the Taser at. We did the same analysis – Mr. Brown's position after he got shot and then we've noted that out of the 24 witnesses, civilian witnesses, that were interviewed in this case, six of them said that they saw the shooting. Of these, none of them saw the suspect with a Taser in his hand and only one witness, Kenneth Williams, claims the suspect was advancing toward the officer at the time the shots were fired. However, even Kenneth Williams says that the uh...that Mr. Brown's hands were empty at the time of the shooting.

We did an analysis of the belt recorders for both officers and have tried to analyze those statements prior to, during the shooting, and following the shooting. For purposes of this report, there are some incons...there are some errors, some statements that were made – a statement that was made by Officer Ellefson just prior to the shooting that we were unaware of until last night. During further review of that tape, which in a...in a couple of instances, will invalidate some of our, uh, analysis at the conclusion of that.

So, uh...that pretty much concludes it. If you have any questions, I'll be glad to answer them at this point. We anticipate doing the conclusion, Part 2, of this investigation perhaps December the 6th.

DR. PAYNE – I just want to, if I may, let the Commission know, and also members of the public, that this is a preliminary presentation by our investigator. It is Part 1 of the investigation. It is by no means complete, as he even mentioned now. It's an on-going investigation where, even last night, we discovered some further...some facts that are relevant to this case. Our investigator intends to come back to this commission to conclude his report and in that report he will also address issues of toxicology. He will also – I have instructed him to...his firm has experts, what they call technical illustrators who will recreate the positions of the bodies based on the Coroner's report and the information that we do have so that the Commission will be better able to understand the positions of the officers in relation to the deceased, Brown, the trajectory of the bullets, the entry points and where they ended up, and so this is really the first time the Commission has done something like this and so it's just an indication that we are catching up with the times, and so we'll have a computer-aided reproducing of the positions so that you can understand how a downward trajectory would end up coming inside a chest level and all these other questions I'm sure you have. And so...

And also, in addition to that, the, uh...our investigator will attempt to address issues of perception – what is reasonable perception – how do you perceive danger, what would a "normal person" perceive danger or threat, because I know that has been an issue with this commission, a concern, in terms of how the officers perceive situations and the actions following that, so....

And at this point, I believe our investigator will entertain questions from the Commission.

CHAIRMAN DAVIDSON – Um...Mr. Warnberg, I had set up a few questions to ask, but based on the information we've just received, I don't want to be inaccurate in my questions to you, but certainly one of them was going to reiterate to you that we certainly are interested in perception. Now I realize you can talk to the officer involved, but maybe you can, through the facts or, certainly the witnesses, what the perception would have been of those people that would be normal for what was going on. We'd like to hear back from you, if you can do that for us.

My questions had to do with the nightstick that was being used at the time and the officer's...my understanding there was some discrepancy or there was one officer didn't know where the other one was or something to that effect. But I think I'll hold those off until we get facts on that from you, but I'll certainly turn it over to any of the other commissioners for their questions.

COMMISSIONER BREWER – Mr. Chairman, I feel that we probably should hold off. If we're halfway in the middle of an investigation, let's have the information before we start asking questions. As of last night, things changed on this thing, so it...it could totally confuse this matter if we start asking too many questions now.

CHAIRMAN DAVIDSON – I agree with that. When is the – based on our calendar – when is the next report gonna be due?

DR. PAYNE – We originally had calendared December 6th as the next report. However, as you recall, earlier today during closed session, certain commissioners expressed that they would not be available for that date that they would be out of town, so that we would be lacking a quorum. So we could schedule it for the second Wednesday of January, give time for the investigator to recreate computerized versions of the positioning and then immediately begin the drafting of the public report.

CHAIRMAN DAVIDSON – Well, obviously, time is of the essence and we need to do this expeditiously as we can.

DR. PAYNE – If we can conclude the public report by the end of January, even if that means calling a special meeting, then that means, then, that both the public and the Commission will be fully versed on the case and we can go into closed session no later than February and make the finding to the City Manager in February,

which would leave March, the remaining of February, March, and what little bit of April is left for...

CHAIRMAN DAVIDSON – That's fine. Mr. Warnberg, what I would ask at that meeting, if you could recapture what you've just said in a brief way before you start on the second half of this to make sure that all of the... What I'm a little concerned of is, getting this in two parts...I want to make sure that it all comes together as much as possible.

MR. WARNBERG – Sure...

CHAIRMAN DAVIDSON – I'm sure you'll do that, but if you could do that, I'd appreciate it.

MR. WARNBERG – Commissioner Ward...

VICE-CHAIR WARD – Yeah... First of all, I'd like...um...you said something about some information that come to your attention as late as last night. Could you elaborate on that please?

MR. WARNBERG – Yes, sir. We had done an analysis of the belt recorders for Officer Ellefson and Officer Stucker and in a continued review of those belt recording statements, I'd issued the report, prepared the report, and included the analysis of those belt recorder statements. Last...last night, we found a statement on behalf of Officer Ellefson just prior to the shooting that we...that was inaudible prior to...in our prior listenings that changes the analysis significantly.

VICE-CHAIR WARD – What was the statement?

MR. WARNBERG – The statement by Officer Ellefson just prior to the shooting was, "Drop the guh..."

VICE-CHAIR WARD – What's a "guh?"

MR. WARNBERG – Well, we believe that it's pro...it was most likely the gun, the Taser gun. But there is still some evidence that is...that has not been submitted yet. We have an analysis of the fingerprint evidence on the Taser gun, which was inconclusive for Mr. Brown's fingerprints. However, the DNA evidence that was submitted by the Police Department has not been returned by DOJ for conclusive...finding. So...so we don't have the DNA evidence on the, uh...on the Taser gun. We had not previously heard that almost inaudible statement on the part of Mr. Elle...Officer Ellefson just prior to the shooting, so some of the analysis with regards to the statements as they pertain to the shooting, are in error.

VICE-CHAIR WARD – Okay. One of my concerns is, in reading the report, I never heard any of the investigators or either one of the officers refer to the Taser as a gun. Every time they referred it, they referred to it as the Taser. You might want to take a look at that. I did not review the reports with that in mind, but I don't...my recollection is that every time they made reference to a Taser, they called it a Taser, not a gun and um... So... And then, what I would like to know, in addition to that, if that were the fact that he said, "Drop the guh" or whatever, how does that comport with all of these other...all this other information that we have? You know, we have some people here, according to this diagram, we have three witnesses that's almost as close to the situation as the police is and none of those witnesses saw him with anything in his hands and, you know, it's kinda hard for me to put it together that none of the witnesses saw it, but all of a sudden, that's what happened.

MR. WARNBERG – Yes, sir. That's correct, too. And, uh...and as part as...as part of Part 2 of this investigation, we're trying to locate and recontact some of the crucial witnesses in this things to clarify and harmonize some of their statements that were made to the Police Department and then later, to myself in the investigation.

VICE-CHAIR WARD – The other thing, in looking at your analysis, you know, these guys was asked some critical questions and seems that...that they could have responded to either one of them – Officer Ellefson could have responded to either one of them by saying that he ordered him to drop the gun. But he never makes that claim in this analysis. The only claim that he makes, that instructions he gave the young man, was that "I was giving commands for the suspect to get on the ground," and uh, so, if he's answering questions about, you know, what happened just before the shooting and all of that, seems the first thing he would have did was indicated that he had given this man – this man had the Taser and he had given him instructions to drop it and in light of that he fired. But, um, you know the fact that...that statement would be a very critical statement to the outcome of this investigation, but right now, and I just see that statement standing out there

alone. I don't see it connected to the other evidence and if you could do that for me, I'd appreciate it. Thank you.

CHAIRMAN DAVIDSON – Chair recognizes...

COMMISSIONER CORRAL – What I would like you to look at is, where you have Witness #2 and Witness #1 – Witness #1 is Williams; 2 is Wilsey. Williams is the only one that says that he stood up? That...

MR. WARNBERG – Yes.

COMMISSIONER CORRAL – But Wilsey says that he was sitting down?

MR. WARNBERG – Well, I didn't include Wilsey in the summary report, Part 1. Lynette Wilsey is a key witness and she needs to be recontacted and reinterviewed. Some of her statements to the Police Department are contradictory or a little bit inconsistent and some of her statements to us as compared to what she told the Police Department is a little bit inconsistent. We need to really try to find Lynette Wilsey, which I'm involved in doing currently and go back to her, not for the overall details of the incident, but for some specific clarification on exactly what she saw.

COMMISSIONER CORRAL – Okay. My next question is – How many people say that they saw him sitting down with his hands out like this?

MR. WARNBERG – Just about...well, all of the civilian witnesses are...are pretty consistent that he was in a sitting...sitting or a crouched position when he was shot, with the exception of Williams. Williams says that he was up, advancing toward the officer with his hands up, but empty. The other witnesses seem to put him sitting or squatting and what we're attempting to do is provide the Commission with some trajectory perspective with regards to Officer Ellefson's statements as to where he was when he fired and the distance he was from Mr. Brown and then do some technical illustrating for trajectory based on the autopsy – measurements, photographs, and information that we've received from the autopsy report. There seems to be, at this point, which requires us to go back to the Coroner's Office and do a little bit of follow-up with regards to that as well, because there's a few areas in the autopsy report with regards...it doesn't quite work out in a technical illustration as the way the autopsy report is explaining it. So that needs to be worked out with the Coroner's Office and clarified to some degree.

COMMISSIONER CORRAL – Okay. My last question is – Officer Ellefson, this is his second shooting?

MR. WARNBERG – Yes it is.

COMMISSIONER CORRAL – In what time span?

MR. WARNBERG – Officer Ellefson shot Todd Argow in November of 2005 and, I don't know if you remember the...the summary of that case, but it was clearly a suicide by police. Mr. Argow...

COMMISSIONER CORRAL – I do remember that...

MR. WARNBERG – ...and Officer Ellefson was the, uh...was the officer involved in that shooting as well.

COMMISSIONER CORRAL – Okay. That's all I have. Thank you.

CHAIRMAN DAVIDSON – Uh...any other commissioners wish to question our investigator? Butch, thank you for coming. We appreciate it and we'll be looking forward to your next report.

At this time, the Chair would like to call Dr. Bailey back to the stand. He'd like to comment on the Brown incident.

DR. RON BAILEY

Thank you. I have a couple of questions. The first is a statement. Again, this case clearly exemplifies our problems in dealing with mentally and physically impaired individuals and I'd be interested in trying to determine what venues Officer Ellefson used to attempt to diffuse the situation before it got out of hand.

MR. WARNBERG – Venues meaning what...what tactics he used?

DR. RON BAILEY – Yes.

MR. WARNBERG – Officer Ellefson, when he arrived, he was...he was immediately engaged in the fight. The fight was already on, so when Officer Ellefson arrived, his first action was...

CHAIRMAN DAVIDSON – Excuse me, gentlemen, without you at the mic, we're unable to record that, and so we'd like to get that on there and uh...if you don't mind, if you could answer that through the mic, that would be great, Butch.

MR. WARNBERG – Sure. I apologize. Um, when Officer Ellefson arrived at the scene, he was...he was immediately engaged in the fight because Officer Stucker had already tased...deployed his Taser to Mr. Brown. So, essentially, the resistance and noncompliance was in...was in effect. Officer Ellefson, his first tactic was to approach Mr. Brown and attempt to handcuff him. Mr. Brown was on his stomach in a semi-compliant posture, but as soon as Officer Ellefson attached the first handcuff to his wrist, Mr. Brown began to resist and did so in a fashion that twi...he was able to twist out of his position, lift himself up, eject Officer Ellefson from his back, uh, and....at that point he had a weapon, essentially. He had a single handcuff on an arm that was attached to a resistive, noncompliant person. So his...that was his first tactic, was to attempt to handcuff him.

DR. RON BAILEY – Again, I'll emphasize to the Commission that this is either the fourth or fifth case dealing specifically with a problem of policing mentally and physically impaired individuals.

Now, my second issue here, and I don't want to use Mr. Warnberg as my sounding board for the evening here, but simplistically, to resist arrest, implies conscious motivation. Would you agree with that sir? If somebody's going to resist arrest, it implies conscious motivation and in your tactical analysis, Page 6, you have "Brown did not lie down with Ellefson's commands." To resist arrest, it implies conscious motivation, so my question to you, sir, is how could somebody who is delirious and either delirious related to psychiatric issues, the medication that he was on for his psychiatric problem, or "drugs" have conscious motivation?

COMMISSIONER PEARCY – Mr. Chair, I'm gonna ask if you could step in here at the moment... I believe what's taking place is slightly out of order. What we're having here is a presentation to us by our investigator and what we're allowing at this point in time is for comments by the public. I don't believe it is appropriate, at this time, for the public to engage in an inquisition of our investigator, especially in light of the investigation is continuing.

DR. PAYNE – I'm gonna have to agree with Commissioner Percy that comments would be allowed, but direct interrogation of the investigator would probably be better served once the complete report is concluded and he can address issues of perception, including how would an officer perceive that this person could have followed instructions if he was mentally impaired, so I'll have to agree with Commissioner Percy on that...

CHAIRMAN DAVIDSON – Dr. Bailey, if I could ask you to go ahead and ask the questions, but we'll hold off answering those at this time and that way, maybe our investigator can write those notes down and address them on his next presentation.

DR. RON BAILEY – Yes, sir. That's fine. My only last question is – do we have the autopsy report on this case at this point?

DR. PAYNE – Yes, we do have a Coroner's report.

DR. RON BAILEY – Do we have the cause of death as listed on the Coroner's report? And the reason why I bring this up is because a diagnosis of excited delirium has been popularized in a case very similar to this that occurred in Dallas 25 September 2006 and the term is ambiguous. I'm just wondering what the cause of death was uh...was, uh...what cause of death was issued on this case.

MR. WARNBERG – Gunshot wound...one round...

COMMISSIONER PEARCY – Mr. Chair, I'm gonna ask once again that you'd instruct our investigator not to answer any of the questions at this time. It's really inappropriate.

DR. RON BAILEY – Thank you very much.

CHAIRMAN DAVIDSON – Thank you, Dr. Bailey.

DR. PAYNE – I do want to, though, for Dr. Bailey's benefit, let you know that this information that you've asked right now is public information and is available through a public records request, if you so desire to do that and you can get a copy of the Coroner's report for yourself. That is public information.

CHAIRMAN DAVIDSON – Mary Shelton would like to come, but Mary, you haven't indicated what issue you want to talk on on your form. Is it this issue?

MARY SHELTON

Yeah. I said...it says the Brown shooting on the form.

CHAIRMAN DAVIDSON – Okay, thank you. Go right ahead.

MARY SHELTON – I am...I have a lot of the same concerns and questions that were raised by Mr. Ward. I noticed here, on one of these column pages that, apparently Detective Cobb was asking about Brown's position after he got shot and he said "The suspect has still got the Taser in his hand. Are you and / or Officer Stucker still giving commands to him?" "I was giving commands for the suspect to get on the ground," which makes me have the same question as to what Jim Ward said about the comments of getting on the ground versus what apparently is on the audio tape of "drop the gun" or whatever that was. And I did have a question, too, about the Taser. From what I understand, there was two different Tasers involved in this case: one was the M26 and one was the X26 and I was wondering which one was which because the M26 is the one that resembles, if I'm correct, is the one that resemble a hand gun, except for the coloring and obviously not being a gun more than the X26 model. And, um, I was confused about some other things as well, because I can't understand why some of these RPD versions and the briefing versions are so...I mean, they're... include stuff that I can't find in the officers' statements. And one of the things that I was concerned about was the issue of the...was the briefing by Capt. Cannon, who said who was Brown pointing the Taser toward; Capt. Cannon: "Fearing for their safety because the power indicator light for the Taser was on." Officer Stucker hit Mr. Brown with the baton, apparently at the same the shooting was going on. But I was curious because I didn't see any mention of the power indicator light in any of these statements and I don't know whether that was included as part of the interview or not and I think that's a very important part of the investigation because, depending on where the power indicator light is located, that should give you some idea of how the officer was able to see it, whether or not the Taser was pointed in their direction because...obviously, the power indicator light is on a Taser somewhere and if the officer can see it, then they're probably looking at that part of the Taser and in the daytime...and that part of the Taser... and from what I understand with the M26, at least, the power indicator light is on the back of the Taser, according to the Taser model that I had. So that was my concern about that. But that's just based on the training material that the Riverside Police Department gave.

I was also concerned and have questions about the issue that were kind of alluded to here about the errant Taser probe that was fired and hit Officer Stucker in the hand. Apparently, at this point, they have finally concluded that that possibly came from Terry Ellefson's Taser, but with the time line that was produced by the briefing and some of the statements that were made in here, I'm not clear exactly when that Taser probe was even fired because it seems like, at least with the briefing and then some of the other information... it said the Taser probe... "Ellefson discharged his Taser probes" and dah dah dah dah dah, and then there was this shock and then there was... Ellefson had...I mean, Stucker having this Taser probe in his hand. And there's some confusion on to that, because I think that's a pretty important element of the case, is that what happened that an officer was struck by another officer's probe. I mean, that's a safety issue for that officer, as well, because that's obviously not a good position be in where you're being shot by a Taser probe that could potentially debilitate you. In this case, apparently, it did not.

And I also had questions back to the first page regarding the mental diagnosis of paranoid schizophrenia. And there is a statement here saying that he was prescribed various prescription medications for the disorder and I was wondering whether or not there was any access to any, like, hospitalization records or whether they interviewed people in the family or whether they actually had copies of these prescriptions of drugs that would have been given for paranoid schizophrenia. And, um...cause that's an interesting aspect of the case because it goes back to the importance of having mental health and crisis intervention training on the Police Department, which they currently do not have.

Thank you.

CHAIRMAN DAVIDSON – Thank you, Mary. I'd like call on, now, Michael Morales.

MICHAEL MORALES

Thank you, Mr. Chairman.

You know, honestly, it is not fair to be "Monday morning quarterback" in fairness to the officers involved in this shootings. But something is not right here. Something doesn't add up.

November 2005, Terry Ellefson shooting. He shot Todd Argow, a Caucasian gentleman and the explanation is depression, suicidal, alcohol intoxication. Five months later, just about, April the 3rd, '06, Terry Ellefson shoot to death Lee Dante Brown. Mental illness or disability is the explanation on this report.

So you're telling me that this officer or someone at the Dispatch center did not provide the officers with the right information. These two persons, these two people have some type of background, mental illness, alcoholic, be careful – this is a failure in training, as well...as well, you know, culture. What concerns me is that, even a dog deserves some type of compassion. I don't care what it is that he was intoxicated, mentally ill, whatever. You are trained...you are the trained police officer and this is...this falls in the 10% of City employees that do not deserve to have a job in this city. There was, in all this, 12 incidents, 12 people killed, 18 officers involved, two left the force, one involved in two – Officer Terry Ellefson. There was no designated shooter...

Let's go back to the Tyisha Miller incident – 17 to 19 rounds to kill a human being. That's a failure in training as well as culture. No priest or pastor to administer the last rites before you shoot a human being. That's not fair. No attempt...knowing the background, the mentally ill background, the alcoholic intoxication or whatever, no attempt to contact family members to try to diffuse the situation, the altercation. No extra backup was called knowing that these two persons had some type of background.

What concerns me the most, that an officer by the name of Terry Ellefson – and this is nothing personal; I never met the gentleman – but it proves to me that this person is not learning by training. There's something wrong with him... Culture. That's what it is. What I'm going to suggest to Chief Russ Leach in my next meeting with him – one to one – that any officer, from now on, involved in a shooting, should be dismissed. Dismissed. Or placed on desk duty for about a year, because obviously, those people are being trained but they're not acting according to their training because obviously we have a culture problem between this Little Town USA Police Department and the community. It is now 52% of this population of Latino ancestry and less, less than 3% of the police force are officers able to communicate on the field in the same language.

And I'm not raising the ethnic flag here, but it's a reality. Out of the people killed we have, six Caucasian, if I'm not mistaken, three Afro-American, two Latinos, and Laotian. And so something has to give. Think about it.

Thank you.

CHAIRMAN DAVIDSON – Is there anybody else that wants to speak on this issue? Item #7? Now this is out of order and normally, but I understand this person was late in arriving and wasn't here for Item Agenda #6, so I'm gonna give, Leslie Braden, a chance to come up and talk about Item #6.

LESLIE BRADEN

I do apologize for being late, but I came from work.

My name's Leslie Braden and Item #6 is closely related to me because Joseph was my brother.

What the Commission does not know is this is the second tragedy that my family has experienced. 1992, my brother, Charles, was shot by the Riverside County Sheriff's Department. Same scenario. The scenario is always the same – they went for the gun. Despite that 20 people did not see a weapon.

In Joe's case, same scenario. He picked up a Taser. He pointed it at the officer. I don't know how a person can point a Taser and then they're shot in the back. I don't even know why there's so much excessive force used. We do know that he was shot four times. Joe was unarmed. He did not have a weapon. The officers have a bullet-proof vest. They have pepper spray. They have Tasers. They have rubber bullets. These are all things that taxpayers are contributing to the police department in an effort to prevent situations like these, but none of those resources were utilized in this case.

According to Mike Medici, the lead investigator in this case, states that Joe had saw the officer earlier in the morning and that his...he saw his demeanor, his look, that the officer interpreted him as giving him a mean look. I don't know quite what that means, and if I shot everyone that gave me a mean look, then where would I be?

Joe was an intelligent, bright young man with a promising future that has now been cut off. What needs to happen...we've been exposed to or subjected to so many questions: what was Joe doing in that area? What was he doing, I mean, where did he work, these types of things. What was his background? I don't think you have to have a permit to be anywhere in the United States, as long as you're a citizen. The thing is that we don't do, we don't look at the officers' background. Several people have approached me as to the officer that shot my brother, saying that he had attempted to become a CHP officer, but was unsuccessful because he didn't pass the psychological evaluation. We need to look at what the officer's day was like; what types of things they do on their outside; what types of groups are they associated with, because one thing we forget just because they're police officers, does not mean that they're any less human than you or I. Just because we give them a badge – every day I see – I'm in the transportation department – I see officers that assume, because they have been given a badge and they've sworn this authority or this honor, that they be...that they think they're above duty. They do things. I've been pulled over for no reason other than being interpreted that I'm driving a nice vehicle. I've been questioned as to where I bought it. The same place as you would buy yours – at a car dealership.

These things have to stop. Have to. Joe was not wanted by the police for any reason. He was just a young man, bright young man, minding his own business. I'm not saying that the fact that he struck an officer is okay. But I don't believe that what Joe received in compensation for that was just.

And I'm gonna leave you on this note, that I, Leslie Braden, will never let Riverside County forget the trauma that they have caused to one family. Two brothers. My mother and father are gone, and that is a result of the first one. Riverside County bounced my brother, Charles Hill's case for five years and threw it out of court for lack of evidence. I don't know how it's lack of evidence when you have 20 people saying they never saw a gun, when there are sworn depositions that say at the time of the shooting, officer was trying to release his hands from underneath them to cuff him. How can you pick up a weapon at the same time? It's impossible, not unless he had a third arm. As to my recollection, he did not.

You have to think, if it was your son, your daughter. We will have to live with this for the rest of our lives. And then what are we gonna do about it? Our lives will never, ever be the same. It took them 'til 10:00 at night to notify us that they had shot and killed my brother. I don't know what the delay is, what took so long. We have lived in this county for all our lives.

When I went to Parkview Hospital a few days later, the emergency staff had the same question that we had: why no family came? Well, no family came because he was...we were never notified. Same instance with Charles. We were at the hospital. According to the records, he died at 5:32 PM. I was at Riverside Community at 2:00. They waited until 8:00 to notify us that he was deceased. When we asked to see the body, of course, it's the same story – the coroner already picked him up. There's no one else to identify him and we were never allowed to see him and the same case with Joe.

We need answers and I will not rest emotionally, psychologically, until I get those answers and I will protest, I will march, I will do whatever it takes to get them. And we have to have some kind of reform. Something has to happen.

I'll leave you with that. Thank you for your time.

CHAIRMAN DAVIDSON – Leslie, we want to thank you for coming all the way down here. You bring a very powerful message and I'm sure your words were heard by all the Commission. I'd also like to tell you that you have the complete Commission's sympathy for you and your family. Thank you.

8) CPRC 2007 Meeting Schedule

Motion for Approval	Motion	Second	Approve	Oppose	Abstain
Approve proposed 2007 CPRC meeting schedule	Brewer	Ward	7	0	0

9) Approval of Minutes

Minutes for Approval	Motion	Second	Approve	Oppose	Abstain
July 28 Informational Seminar (Special Meeting)	Brewer	Pearcy	7	0	0
September Regular Meeting	Brewer	Pearcy	7	0	0

10) Executive Director's Report & Comments

Executive Director Payne:

- Present plaque to outgoing Commissioner Frank Arreola
 - next year's will be in San Jose, CA
- CPRC investigator is working on both recent OID's

11) CPRC Committee Membership

A) Outreach Committee – Commissioner Quinto for Brian Percy, Chair

- 1st meeting since summer;
- covered several different issues
 - quality survey;
 - have some speaking ops developed by staff;
 - discussion of CPRC outreach plans;
 - directed staff to do "best practices" research

B) Budget Committee – Bob Garcia, Chair

- No Meeting

C) Policy & Procedure Review Committee - Jack Brewer, Chair

- No Meeting – No Report

12) Commissioner Comments

Commissioner Percy suggested a medical liaison regarding issues such as Dr. Bailey's issues, for training of Commission on medical issues as they relate to officers' interaction with potentially medically-disabled persons.

Chairman Davidson said he is in favor of discussing with the Commission the formation of a committee to study the suggestion.

13) Items for Future Commission Consideration

There were no items for future Commission consideration.

14) Adjournment

The Commission adjourned at 7:05 PM.

Respectfully submitted,

PHOEBE SHERRON
Sr. Office Specialist



**REGULAR MEETING
MINUTES**

for

Wednesday, February 28, 2007

**4:00 P.M. – 5th Floor Large Conference Room
and**

**5:30 P.M. - Art Pick Council Chambers
3900 Main Street, Riverside, CA**

CASE REVIEW – 4:00 P.M.

Case Review Roll Call

Brewer	Davidson	Garcia	Brandriff	Ward	Pearcy	Corral	Castro	VACANT
✓	A	✓	✓	✓	✓	✓	✓	---

✓ = Present A = Absent

Staff: Mario Lara, Interim CPRC Manager; Phoebe Sherron, Sr. Office Specialist

Public Comment

There was no public comment.

Closed Session – Case Reviews

Pursuant to Government Code Section 54957, the Commission adjourned to Closed Session at 4:03 p.m. to discuss issues pertaining to PUBLIC EMPLOYEE PERSONNEL MATTERS.

	<u>CPRC CASE NO.</u>	<u>IA CASE NO.</u>
1)	06-034	PC-06-06-008
2)	06-040	PC-06-07-016
3)	06-042	PC-06-07-021
4)	06-065	PC-06-11-052
5)	06-044	PC-06-08-027

The Commission recessed at 4:45 P.M. to reconvene in the Council Chambers.

OPEN SESSION – 5:30 P.M.

Audio for the following proceedings is available on the CPRC website:

www.riversideca.gov/cprc

Copies can also be obtained by calling the CPRC office at (951) 826-5509.

Vice-Chair Ward led in the Pledge of Allegiance. Vice-Chair Ward then asked Ms. Sherron to confirm commissioner attendance.

REGULAR MEETING – ROLL CALL

Brewer	Davidson	Garcia	Brandriff	Ward	Pearcy	Corral	Castro	VACANT
✓	A	✓	✓	✓	✓	✓	✓	----

✓ = Present A = Absent

STAFF: Mario Lara, Interim CPRC Manager
Phoebe Sherron, Sr. Office Specialist

Vice-Chair Ward advised the Commission and members of the public that Item 6 would be heard first and that remaining items would be taken in order.

Brown Officer-Involved Death Case

VICE-CHAIR WARD – At this time, we have a briefing from our investigator from Baker Street Group.

MR. GURNEY "BUTCH" WARNBERG – Good evening, ladies and gentlemen. Thank you. This is going to be the final summary report in the incident involving Lee Deante Brown who was contacted, shot, and killed by Riverside Police Department in April 3rd, 2006 in the area of 1910 University Avenue at the Welcome Inn of America.

Just by way of review, this report that's in front of you this evening will be...will supersede all other reports that are...that have been presented in this case. We've done actually a Summary Report, Part 1, to the Commission. This final report that supersedes that previous report is a compilation of both reports with the addition of some additional investigation that was conducted following Summary 1.

Just by way of review, the person that was shot in this case was a Riverside resident, African-American male by the name of Lee Deante Brown. He was 31 years old, divorced, father of two small children, with a moderate criminal record here locally and in the county.

The summary of events as they took place on that day are, essentially, that, um, Mr., uh...Mr. Brown lived in a residence in a garage with his fiancé on 4th Avenue here in Riverside, um, and in the early morning hours, sometime on April the 3rd, while they were asleep in the garage, Mr. Brown woke up and was going through some psychotic event. It frightened his fiancé to the point that she told him to leave and he left the residence sometime in the morning hours and his exact travels are unknown until he actually arrives at the Loma Vista Apartments sometime in the early afternoon.

Mr. Brown was on foot and, during that time, people began to notice some pretty bizarre behavior exhibited by Mr. Brown. This behavior included reports to the Police Department Dispatch Unit that

included such behavior as running in traffic, screaming, yelling, exposing himself, cursing, all types of odd behaviors. So police were dispatched to look for this individual. At about approximately 1:52 in the afternoon, Officer Paul Stucker was in the vicinity of the Welcome Inn at 1910 University Avenue. He was flagged down by a witness to this shooting, a fellow by the name of Kenneth Williams. Officer Stucker was directed to the parking lot at the Welcome Inn where Mr. Brown was seated on the ground sort of in the southwest corner of the parking lot. University Avenue runs east and west. The Welcome Inn actually is situated on the south side of University Avenue with the extremity of the parking lot actually butting up against University Avenue, which would be the north end of the parking lot.

So Officer Stucker was directed by Kenneth Williams to Mr. Brown, where he was seated over in the southwest corner and, at the same time, Mr. Williams gave Officer Stucker some commentary as...as to his conclusions as to what was wrong with Mr. Brown. He described some of his behavior and suggested to the officer that Mr. Brown was probably on a street drug he referred to as "water," which is street terminology for the drug PCP.

Officer Stucker parked his vehicle in the parking lot of the Welcome Inn and exited his car, actually motioned to Mr. Brown to step toward him at which time Mr. Brown retreated to a cubby hole in the uh, the southwest corner of the uh, of the parking lot. Attached to the report here, in the back on the appendages, are actually some diagrams of that parking lot and you can see from the diagram, in that southwest corner, right by Apartment 5...4, 5, and 6, there's a little cubby hole right there. The position of Officer Stucker's vehicle, sort of in the middle which is labeled on the diagram as Car No. 1, you can see from that angle, Officer Stucker temporarily lost sight of Mr. Brown when he retreated into this little cubby hole.

So Officer Stucker, essentially, went to his car, and because of the model of Taser that he carried, he didn't carry it on his belt with his equipment. He actually kept his Taser weapon on the front seat of his car. So he retrieved the Taser from the front seat of his car and then maneuvered and positioned himself, with the Taser, in a position where he could once again see where Mr. Brown was. He didn't know, at that point, if he had gone into an apartment or what exactly had happened.

But anyway, he repositioned himself and was able to see Mr. Brown, who had flattened himself out against the wall of that cubby hole, just standing with his face toward the wall in a...in a...in that ti...with his hands down to his side.

As Officer Stucker approached Mr. Brown, he began to give him verbal commands to reveal his hands, put his hands up in a position where he could see his hands. He orders him to put his hands on the wall. Mr. Brown, at this point, is non-compliant with Officer Stucker. He is talking incoherently, gibberish, using terminology, you know, about God and Jesus. He is repeatedly asking for "Mariah." He is saying things that are not very comprehensive.

When Officer Stucker realizes this, he activates his belt recorder and he points his Taser weapon at Mr. Brown and continues to give him orders as to what to do with his hands and how to comply with his orders. Mr. Brown is noncompliant. He's...he's talking incoherently and doesn't do what Officer Stucker orders him to do.

At some point in that contact, Mr. Brown actually turns away from the wall and takes a step toward Officer Stucker, who is approximately 10 feet away.

Yes, sir...

COMMISSIONER PEARCY – Just for clarification, do you mean Officer Ellefson?

No, Officer Stucker at this point, sir. Officer Ellefson hasn't arrived on the scene yet.

So as Officer Stucker is aiming his Taser at Mr. Brown, Mr. Brown turns, takes a step toward Officer Stucker, who perceives this movement as threatening and fires his Taser from approx...from a distance of approximately 10 feet. Both probes strike and make contact with uh, with Mr. Brown. The electrical shock provided by the Taser weapon is initiated as soon as the trigger is pulled and the darts are fired...lasts for five seconds. Mr. Brown stiffens, falls to the ground. One of the probes comes loose. Officer Stucker notices this and he is concerned and doesn't want to approach Mr. Brown with this loose Taser dart on the ground, really not knowing what this individual is going to do. Now Officer Stucker is still by himself at this point, although he had radioed for help, had requested back-up from Dispatch, and he could hear sirens in the background so he knew that his cover officers were...were gonna be there shortly. But nevertheless, he continues to tase Mr. Brown, who is reacting to the voltage from the Taser gun. He's convulsing, rolling...rolling around, but essentially, on his stomach and appears to start to comply. Although Officer Stucker's giving him orders to put his hands behind his back, Mr. Brown seems to be putting his hands behind his neck but, nevertheless, seems to be trying to comply with these orders.

At about this time, Officer Ellefson arrives in his police unit in the parking lot to assist Officer Stucker. As Officer Ellefson exits his car, he can hear the electricity from Officer Stucker's Taser being discharged. He can clearly see the condition of Mr. Brown on the ground reacting to the Taser and he approaches and orders Officer Stucker to disable his Taser weapon in order for him to go in and effectively handcuff Mr. Brown, get him under control.

Officer Stucker looks down at his weapon, his Taser weapon, to flip the switch and as he's disabling his Taser weapon allowing Officer Ellefson to proceed with the handcuffing, he hears one handcuff go on...go...engage. He looks up and, at that point, he sees Mr. Brown able to get his arms away from Officer Ellefson, in a position where he is attempting to raise his body and essentially throw Officer Ellefson off of his back, who had kneeled down and put one knee – Officer Ellefson had bent down and put one knee and his weight, his body weight – into Mr. Brown's back, grabbed his arm, attached one cuff to his wrist, and at that point, Mr. Brown reacted, got both arms free, positioned them in a way that he was able to eject Officer Ellefson from his back.

Officer Ellefson, at that point, stepped backward, was trying to gain some distance between him and Mr. Brown, and he orders Officer Stucker to apply another Taser jolt. Officer Stucker realizes that one of his probes is no longer in Mr. Brown so he removes...Officer Stucker removes the cartridge from his Taser in an effort to allow the Taser to be used as a contact weapon or a contact Taser. When he does...when Officer Stucker removes the cartridge, Officer Ellefson, at that point, steps back and removes his Taser from his holster that's on his belt and aims it at Mr. Brown.

As Officer Stucker moves in to attempt a contact tase with his Taser, Officer Ellefson fires his Taser and one probe strikes Mr. Brown and, apparently, one probe strikes Officer Stucker in the hand. Officer Stucker then receives an electrical shock from Officer Stucker's Taser and he removes himself from the fight with Mr. Brown, steps back, turns his back to the fight, and tries to deal with this Taser probe that's in his hand. Officer Ellefson, at that point, is attempting to Taser Mr. Brown, but finds that his Taser has no affect on the subject and by affect, he means that he is still yelling, cursing. Officer Ellefson has used the Taser before. He knows what the results should be and these results are not being experienced so he knows that his Taser probes are not properly or accurately working. So Officer Ellefson steps back and removes the cartridge from his Taser gun, which will allow him to effectively step in and deliver a contact tase as well.

Officer Ellefson attempts to do that, moves in on Mr. Brown, applies a contact tase to his upper body, upper shoulder area, but it does not seem to have any affect on Mr. Brown. So Officer Stucker...excuse me, Officer Ellefson moves back again, goes in a second time, attempts another contact tase and both subjects are kind of falling to the ground at this point.

During this maneuver, during this attempted contact tase by Officer Ellefson, he is warned by Officer Stucker regarding the...the loose handcuff and Officer Ellefson now loses his Taser gun in the fight.

He drops it, comes loose from his grip, falls somewhere into the proximity of Mr. Brown. Officer Ellefson steps back, looks down, sees Mr. Brown attempting to grab or reach down with his right hand. He sees the Taser in the close proximity of Mr. Brown after the scuffle and as Officer Ellefson is stepping back, it is described that Mr. Brown retrieves the Taser with his right hand, comes into a squatting position and lunges toward Officer Ellefson.

At the same time, now, Officer Stucker also sees Mr. Brown retrieve the...retrieve Officer Ellefson's Taser and he opts to deploy his expandable baton. So Officer Stucker is...removes his baton – he had placed his Taser in the small of his back, unconvinced that it was going to work – places the Taser in the small of his back, draws his expandable baton and delivers two baton strikes to Mr. Brown's left leg in the vicinity of the shin, just below the knee, hits him twice in the shin.

When...as the...as he recovers and is attempting to hit him the third time with the baton, Officer Ellefson had stepped back, according to his description, approximately two feet away from Mr., uh, Mr. Brown, drew his duty weapon and fired two rounds, striking Mr. Brown twice in the chest – once to the left of midline, once to the right of midline – in a natural recoil position. He fired from the hip without obtaining a sight picture on the weapon, as he is more or less stepping backward, approximately two feet from Mr. Brown at that mom...at that instant. Mr. Brown falls, braces himself, falls forward, and then the Taser gun is apparently kicked away and recovered some 20 feet from the incident.

So, that's essentially the summary of the fight and what had occurred in the parking lot during the course of the incident. We've tried to, for the commissioners, to...to get a clearer understanding of some of these events. We've tried to take them...or I've tried...tried to take these in...in somewhat separate order and, if you'll notice, on Page 3 of the...of the report, the heading of "The Use of Taser Equipment." Because Mr. Brown was killed as result of this Taser equipment, a lot of the questions that were raised or that were brought to the Commission, were as a result of this Taser equipment. So we've tried to look at the Taser equipment itself and the actions of the...with respect to each officer involved in the incident – how it was used, how it was utilized. And we've...I've taken essentially four...four time...time periods during this struggle which lasted, you know...a pretty short time, actually. Officer Stucker...well, let's see... The entire incident lasted less than a minute and a half. So these four instances take into account the initial contact, how the Taser equipment was used by each officer, Officer Stucker and his Taser equipment, the initial contact prior to the shooting, during the fight, at the time of the shooting, and then just right after the shooting.

What was going on with this Taser equipment during these phases of this altercation with Mr. Brown. This is what we've tried to answer for the Commission in this section of the report. And, if you'll notice, Officer...the officers were armed with different types of Tasers, although they're manufactured by the same company, the Taser equipment is slightly different.

Now, Officer Stucker had the older model, which was the Advanced Taser Model M26 Law Enforcement. There's a few characteristics of that Taser that are slightly different than the one Officer Ellefson was armed with, which was the Advanced Taser Model X26 Enforcement....Law Enforcement model. Both manufactured by Taser International, Scottsdale, Arizona.

Now one of the...one of the questions that came about in Summary Report No. 1 following the briefing was that during Capt. Cannon's briefing to the CPRC, initial briefing, there was a statement made that fearing for their safety, because the power indicator light for the Taser was on, Officer Stucker hit Mr. Brown with his expandable baton.

Now, the following question was raised as a result of that statement and the question essentially said, "If the power indicator light on Officer Ellefson's X26 is displayed on the screen on the back of the weapon facing the operator, how could the officer see the light if it was being pointed at them, at the officer?" Now, according to Rick Gilbert, Vice-President of Training at Taser International, the X26 has a two-digit LED panel on the rear called the Central Information Display (CID). This is

located just above the grip of the weapon, that is handled just like a gun, and faces the operator. There's a small screen just above the grip and faces the operator. When the X26 is armed with the safety switch in the up position, the CID will indicate the percentage of remaining battery strength in the digital power magazine for five seconds, so that screen will display the battery strength for five seconds. Then the CID, the screen, goes blank after five seconds except for a small green dot in the lower right corner that indicates that the device is armed. It's...this...this CID panel, or this screen, is actually a...a monochromatic green in color when it is lighted.

However, the Model M26, which was the weapon that Officer Stucker had, it has a red light called the "power indicator" and it is located just above the grip and faces the operator. This light might pulse or it could be solid, depending on the type of batteries that are being used in the weapon. It is not a reliable indicator of battery strength. It merely indicates that there's enough electrical power being supplied to the unit. So now, the officers had said that...Capt. Cannon had said that the officers had seen the power indicator light on the weapon. That's where it is and that's how it can be determined.

Now, according to Mark Fox at the San Diego Regional Law Enforcement Training Academy, the X26 also has an illumination light and a laser sight on the front of the weapon. Both can be activated, according to the way the individual officer has the weapon programmed; in other words, the officer can...can program his personal weapon as to how he wants it activated when he turns it on. Some officers may not want the illumination light to come on or they may not...or they want the laser light to come on at one instant, they want the illumination light...they can program that according...according to their own desires upon their personal weapon.

We don't know how these weapons were programmed. We...it was...it was never described, so, so we don't really know. But the illumination lamp and the laser sight...of course, the laser sight would be a red, visible dot. If you're pointing the Taser at somebody with the laser sight, you're going to see the red dot from the...from the Taser. You're also, if it's turned on when the switch is up, the illumination lamp is on, you're going to see that as well. Now, if an officer was looking at the Taser from that position and seeing the laser light or the illumination light, he would know that the...that...that...that the unit was on, activated, and you know, ready to go. But, we don't actually know from the statements which light Officer Stucker was referring to when he said that...when Capt. Cannon said that the officer saw the light...the indicator light. So we don't know from any of the reports exactly which light he was referring to.

Now, with...with Officer Stucker, in the initial contact with Mr. Brown, now Mr. Brown was wearing...he was wearing no shirt; he was wearing dark-colored jeans and tennis shoes. Officer Stucker, when he got his Taser out of the car, he approached him, pointed his Taser at him, and began to give him commands. Now, according to the data report, which is a recorded data recording device that's... that's with each Taser equipment, Officer Stucker's Taser was activated on that date at that time, at least on three different occasions and the cycles for each one of those activations is five seconds. The Taser is automatically activated as soon as you pull the trigger and the uh...and the darts are fired from the weapon. It automatically activates for five seconds. Then it'll activate every five second after that once you pull the trigger. Now according to Mark Fox of the Regional...San Diego Regional Law Enforcement Training Academy, it is generally...generally recommended during Taser training that officers use the Taser with at least two officers present in order to assure maximum safety for the officers and the suspect. However, the weapon is designed for single...single-officer use under circumstances deemed reasonable to the officer. For example, if the officer's senses a situation is too dangerous to go hands on with a violent, non-compliant individual an...an escape or an attack might be imminent. The officer can use it. It's just general training practices that they say, more than one person should be present when you do this. You don't want to leave a...a suspect being tased on the ground for an extended period of time. It's dangerous not only to the...to the suspect, but it's ultimately dangerous to the officer as well.

Now, um.....now just prior to the shooting, Officer Ellefson told Officer Stucker to deactivate his Taser. Officer Stucker had Mr. Brown down on the ground. He was being tased. He was in a

somewhat compliant position. Officer Ellefson arrives, moves in to...takes his handcuffs out, moves in to actually handcuff the suspect, orders Officer Stucker, "Shut off your Taser." Now...uh...now, according, once again, to the San Diego Regional Law Enforcement Academy, officers are generally trained that the assisting officer go to "hands on" and do handcuffing while the Taser is being cycled. In other words, you want the, uh...you want the suspect to be feeling the affects of the Taser while you're actually handcuffing. The likelihood of being shocked during that maneuver is...is pretty unlikely and it gives the officer much better control over a violent suspect. If you...if you deactivate your Taser, like in this case, when Officer Ellefson told Officer Stucker, "Shut off your Taser," if you have an overly violent suspect, he may...once the electrical shock has stopped, he may very well begin to fight again and then you've got...you know, you've got the whole situation back, uh...back on board. So general training practices are is that you...you attempt to handcuff, restrain during the cycling procedure.

Now at the time of the shooting, Officer Stucker said that Mr. Brown was in a squatting or sitting position with his legs in front of him and was holding the Taser in his right hand. Mr. Brown was attempting to raise himself and deploy the weapon. At the same time, Mr. Brown was pointing the Taser at both himself and Officer Ellefson. Now at this instant, Officer Stucker opted to deploy his expandable baton. Officer Stucker moved to within striking distance, hit Mr. Brown twice in the shin area below the knee, was preparing to hit Mr. Brown a third time when Officer Ellefson fired two shots.

Now, after the shooting, Officer Stucker stated in his interview that he was no longer able to see Officer Ellefson's Taser and warned Officer Ellefson that Mr. Brown may still have the weapon in his hand. Mr. Brown was described as being "curled up" with his hands tucked underneath him. Now the X26, Officer Ellefson's Taser, was recovered and photographed over 20 feet away from where Mr. Brown was shot and ultimately fell. Now Officer Ellefson stated in his interview that Officer Stucker moved in right after the shooting and kicked his Taser away, so there's...there's somewhat of a conflict there between what actually happened with that Taser. It...it just isn't all that clear. It was clearly recovered a nu...20 some feet away, but when and how it was actually kicked away we're not absolutely certain.

Now Officer Ellefson, in his initial contact with Mr. Brown, he arrives while Officer Stucker's pointing his Taser at Mr. Brown and Mr. Brown is in this somewhat compliant position on his stomach, but still struggling. As he exits his car, he can hear Officer Stucker's Taser cycling, or the electricity going through the Taser. Officer Ellefson said it appeared, initially, he was going to comply. He said he grabbed...he went over, ordered Officer Stucker to turn off his Taser, bent down, put his knee in his back, placed his full body weight on top of Mr. Brown, took one hand, cuffed him, and at that...at that point, Mr. Brown resisted; he lost control. He ejected Mr....Officer Ellefson off his back and, um...Officer Ellefson, as he moved back, perceived this as a threat from Mr. Brown, drew his Taser and, ultimately, fired from a distance of about six feet.

Now Officer Ellefson, just prior to the shooting, said that when he fired his Taser, he saw both Taser probes stick into Mr. Brown. However, the Taser did not seem to have any affect and he described as not having any affect, his actions as far as yelling, screaming, waving his arms, things of that nature. It just didn't stop the behavior that Officer Ellefson expected when he fired his Taser. Now, according to the data report on Officer Ellefson's Taser gun, his Taser was actually cycled seven times during that incident so...that's with the probes and after removing the cartridge as a contact Taser.

Officer Ellefson said a number of times in his interview, that he was unaware of Officer Stucker's position during this maneuver. In other words, when Officer Ellefson stepped back, drew his Taser, and fired, he was unaware of Officer Stucker's position, where he was, even in the fight at that point, and he was unaware that he was...he had actually been tased until act...the incident was completely over.

Now because Officer Ellefson's Taser, to his perception, didn't have any affect when he fired the probes, Officer Ellefson removed the cartridge from his Taser gun, which exposes the internal probes, and decided to move in and attempt a contact tase to get Mr. Brown under control. It was at...it was during this maneuver that...that, that he was warned by Officer Stucker of the loose handcuff that Mr. Brown still had dangling from his wrist. It was also during this maneuver that Officer Ellefson, at this point, lost control of his Taser without the cartridge. He had removed the cartridge, moved in on Mr. Brown, attempted a contact tase, and during the struggle, dropped...dropped the Taser.

When he looks down, as he...he describes pushing off of Mr. Brown's back, stepping backward and looking down, he sees Mr. Brown reaching down with his right hand, grabbing the Taser, coming to a standing position, lunging toward him in a...in an attempt to attack him with the Taser and, from a distance of about two feet, he draws his weapon, fires two shots into Mr. Brown.

Now according to Officer...at the time of the shooting, according to Officer Ellefson, he could not see Officer Stucker. He did not know where Officer Stucker was although we know from Officer Stucker's statements, as well as the autopsy evidence of the impacts to the legs from his baton, that Officer Stucker was actually striking Mr. Brown with his baton. But Officer Ellefson was unaware of Officer Stucker's location.

Now after the shooting, Officer Ellefson said it initially appeared, after he fired the two rounds, to him, that the rounds did not have any affect on Mr. Brown, initially, although he had described Mr. Brown's position as being standing, lunging, pointing the Taser at Officer...the...when he fired the two rounds, he said it...it...it did not seem to have any affect initially. Eventually, Officer Ellefson describes Mr. Brown as being down on his knees and he drops the Taser and that's when Officer Stucker came in and kicked it away.

Now both officers, during the incident, had activated their belt recorders, tape recording devices. Officer Stucker did it as soon as he retrieved his Taser, moved from his patrol car into a position where he could once again see Mr. Brown in the cubby hole in the parking lot or in the southwest corner of the parking lot. He activated his belt recorder. Officer Ellefson activated his belt recorder as soon as he got out of the car af...after he parked his car in the parking lot. So both belt recorders were running and recording the, um...recording the incident. Officer Stucker's belt recorder ran for a total of 8 minutes and 37 seconds; Officer Ellefson's belt recorder ran for a total of 13 minutes and 4 seconds.

During the event, you can hear...it happened so quickly and it's so loud and there is so much going on...we're gonna let... We actually have the transcriptions of both belt recorders attached as appendix...as attachments to the report. We're gonna actually let you hear that uh...that recording and you can listen to it. We weren't able to actually detect certain language or certain things that were said in the recording until we actually listened to it in a, uh, enhanced version with some pretty sophisticated earphones, so it's difficult to...to understand, but the transcriptions have been provided by the Police Department. We did not actually have these at the time the uh...uh, this report was completed so there is a footnote to that effect in the report, but the reports were provided yesterday, or the transcriptions were provided yesterday by the Police Department of both Officer Stucker and Officer Ellefson's recording.

So Phoebe, if, um... if you'd like to...both of those transcriptions are at the back of your report. You're welcome to follow along or just listen to the recording as we play it. It only lasts for a minute or so. So Phoebe, if you want to go ahead...

(Enhanced on-scene incident audio is played for approximately 10 seconds.)

Okay, this is...this is, initially, Officer Stucker's contact with Mr. Brown. It's as he approaches Mr. Brown with his Taser in...in...in the cubby hole. Officer Ellefson has not arrived yet, so this initial

part of the ca...the recording is just from Officer Stucker.

Go ahead, Phoebe.

(Playing of enhanced on-scene incident audio continues for 20 seconds.)

Okay, at that point, you can hear the electricity in the background. That's from the Taser. Officer Stucker has fired his Taser and this...what Mr. Brown is saying is as...is as a result of this.

Okay, go ahead...

(Playing of enhanced on-scene incident audio continues for approximately 2 minutes, 53 seconds.)

Okay, that lady that was scre...screaming in the background there, that was one of the witnesses, um...following the shooting. So you could hear...you could hear as it kind of transgr...or transpired, Officer Stucker, Officer Ellefson, the entire incident...it was...it was pretty rapid, uh, a pretty high key...uh, event.

What we've done, or what I've done in the next section here, actually, there were...on Page 9...there were actually four questions and corresponding statements at key points during that incident that came to light in the investigation. These questions have...have been tried to be answered through sources essentially from Officer Stucker's statements, Officer Ellefson's statements, other RPD officers that were present and, of course, Capt. Cannon's presentation to the CPRC when he presented the...the case initially.

Now, Question No. 1, of course, was: What was happening when the shots were fired?

Now, what was actually happening when the shots were fired according to Officer Stucker, Officer Ellefson, other officers present, and Officer Cannon...that's the way this uh...this section of the report is, uh...is more or less laid out.

The second question, of course, is: In what position was Mr. Brown?

Now, we found that in the investigation and the uh...the initial thing, there were so many conflicting statements with regards to civilian witnesses who were present, the officers who were present, as to what position was Mr. Brown in and was he actually presenting a threat to the officers that would justify the uh...the, the use of deadly force. So we've tried to extrapolate what position he was actually in based on these statements in this section.

And then, of course, the third question: Who was Mr. Brown actually pointing the Taser toward? According to Officer Stucker, Officer Ellefson, Mr. Cannon...Capt. Cannon.

And then, of course, in what position was Mr. Brown following the shooting, after he was actually shot? Some of these questions are brought to light through questions presented in the interviews by various detectives; Detective Medici, Detective Cobb, so forth.

There was also, of course, physical evidence that was drawn and worked on during the course of the investigation because the question was: Did, of course, Mr. Brown actually have possession of that Taser weapon? So, of course, there were fingerprints of the weapon that were taken. According to Dawn Boggs at the Riverside Police Department, 13 fingerprints were uh...lifts were taken from Officer Ellefson's Taser. However, none of them were of sufficient quality to actually make an identification.

Then, of course, there was DNA evidence that was take...or, uh...obtained and submitted to the Department of Justice (DOJ) for examination to try to determine did...did Mr. Brown actually have possession of that Taser weapon during the incident? And according to DOJ senior criminalist, David Wu, who examined the swabs taken...swab...from the Taser presented by the RPD, Mr. Wu

said he did not know from what part of the Taser the swab was taken. There was only one swab presented with three swabs...basal swabs and blood to compare with Officer Ellefson, Officer Stucker, and Mr. Brown. So there was one swab of the weapon; there were three swabs for comparison. Mr. Wu said that he did not know from what part of the Taser the swab was actually obtained. So uh...he...he said that he would actually expect that there would be at least three swabs, maybe one from the body of the Taser, one from the trigger, and of course, one from the probes. You would certainly expect to find – because Mr. Brown didn't have a shirt on, he was contact tased – you would certainly expect to find DNA evidence of Mr. Brown on the...on the probes. You may not expect to find DNA evidence of Mr. Brown on the trigger or the body or the grip or wherever. But in this particular case, there was only one swab taken. It could have been from the whole gun. It could have included the grip, the body, the probes, the trigger, the trigger housing, um...we just don't know.

Now the conclusions of those DNA tests uh...which um...according to Mr. Wu, both Officer Stucker and Officer Ellefson were excluded as potential donors for the DNA evidence that was actually present on that swab. Lee Brown is uh...is included as a potential donor and the numbers are astro...I mean, it's...it's a positive identification. There's no question about it. However, the location of the DNA evidence, of course, is still in question...as it was recovered from the weapon, at least.

Now the autopsy was preformed locally by Dr. M. Scott McCormick, M.D., Forensic Pathologist, County of Riverside Sheriff's / Coroner's Office. Now...Dr. McCormick concluded in his autopsy that there were, of course, the cause of death were...was gun...gun shot wound...wounds to the torso. One actually lodged in the heart, which, uh...which was the cause of death for Mr. Brown.

There were actually three entry wounds, if you can picture this: three entry wounds, one exit wound, both bullets were actually recovered from the body. One of the entry wounds was in the left arm, lower part, underneath the tricep. One exit wound was on the inside of the arm. Where this bullet had entered, it exited the arm right here, entered the chest, left of midline, lodged in the heart.

The second round, or the second bullet, actually entered the right side of the chest at an angle, right of midline, and traveled down through the chest cavity and lodged in the flank. Both rounds, once again, were recovered inside Mr....in Mr. Brown following the autopsy. Those descriptions are given here. There were also...there was also evidence, of course, of Taser...Taser burns. There were...there was the evidence of the blunt impacts to the extremities, which included the baton strikes to Mr. ...Mr. Brown's left leg.

So the question arose: what position was Mr. Brown actually in when the shooting occurred? And with all the witnesses, the officers, the civilian witnesses, there were a number of descriptions or scenarios that were presented as, uh...as his position when he was shot. So what we've done, is that we've actually asked a um...Applied Graphics of, uh, Sciences of San Diego to review all of the autopsy evidence, the reports, the things of that nature and prepare a trajectory scenario based on each one of the descriptions as provided by the witnesses. So there's actually three...three scenarios that were presented as explanations of Mr. Brown's position when he was shot and of course, the uh...the number one position, as described by Officer Ellefson, was that Mr. Brown was in a standing position, lunging, with the Taser in his right hand, attacking...lunging and attacking him with the Taser.

Now, according to...according to Doreen DeAvery of Applied Graphic Sciences, who did the traj...trajectory analysis based on the information that was provided, it is most likely that Mr. Brown was not in a standing position, but was most likely in a squatting or sitting position to account for the trajectory of both rounds as they were presented. However, in the uh...in the first position, the standing position as described by Officer Ellefson, he said in his interview, "As I moved away, the suspect stood, kind of pushed forward, lunged forward, directly at me with the Taser."

Now, as you can see, Dr. McCormick never...never drew any conclusions with respect to first shot, second shot in his autopsy report. In these scenarios, the way they're pictured, the height of Mr. Brown and the scale at the bottom of the drawing, if you'll note, is in feet and the distance and the position have tried to ...we've tried to position and distance according to the officer's statement at the time. He was two feet away, moving backward, firing from the hip without a sight picture on his weapon. So in order to achieve that trajectory in a standing position, the...the first round would've had to enter the...the...the left arm...the left arm, go through the left arm, out the left arm, into the chest.

At that point, Officer Stucker would've had to have been kneeling down – that's the small box in the left hand corner – would have been kneeling down, striking Mr. Brown in the...in the left leg with his baton standing directly next to or very close proximity to Officer Ellefson.

In order to arrive at the trajectory for the second shot, Mr. Brown would have to have been falling or going down. If you listen to the belt recorders, the uh...the shots happened "boom, boom." It...it was almost...they are very close together, within very close proximity...very close. So it was concluded that it's...it's most unlikely that Mr. Brown was in this position at the time that he was shot.

Now the second scenario, as described by Officer Stucker, was that Mr. Brown was either in a squatting position or seated on his butt with his legs in front of him. Now, in a squatting position, that was kind of unique to Mr...to Officer Stucker. Officer Ellefson also made mention of a squatting position, but at the time of the shooting, he actually described it as standing. Officer Stucker more or less describes it as squatting, but also refers to the sitting position with his legs extended in front of him and this most closely matches what the civilians witnesses reported as seeing: Mr. Brown in a sitting position with his legs in front of him.

Now you can see with the uh...with the trajectory from the first shot through the left arm from the hip with the natural recoil of the weapon coming up, the second shot would have been to the right side of the chest cavity. So, for those two quick shots, as you shoot, the...the weapon will recoil up slightly and the second shot would most likely be on the uh, on the right side of the chest. You can see the position that the arms have to be in in order to achieve that first shot and whether or not...you know, whether or not it was an attacking position. Now for the civilian witnesses, they almost all consistently say that Mr. Brown was sitting on the ground with his legs out in front of him.

Now the medical and toxicology history of Mr. Brown...of course, the medical history has been arrived at primarily through interviews with his fiancé, Rosalinda Lara, who he had been with for a number of months and who he had been with the night before, woke up in this psychotic state, scared her. She ordered him out and he left in this mental condition that was described as pretty scary. Through interviews with her, she tells us that he had been diagnosed with a mental condition, paranoid schizophrenia with insomnia, and that he had been prescribed medicine, but she was unaware if he had been taking this medicine, if he had this medicine, what doses it was in, who may have prescribed it...we just don't know. We've...we've asked through proper channels with people who would...who would have that information and we have not been provided the...the medical information in any greater detail than that, so we're somewhat at a loss as to his exact prescribed medications and under what treatment he was.

But we also know from his fiancé that Mr. Brown was a user of narcotics, street narcotics, primarily marijuana and methamphetamine and he was known to smoke marijuana laced with me...methamphetamine. Now the toxicology report, as submitted following the autopsy according to the toxicologist at Bio-Tox Laboratories, the only drug that was noted in any quantity was amounts of Delta-9 THC, which is the main chemical that is used in diagnosing for...for marijuana. There was...there was no evidence of methamphetamine, cocaine, morphine, PCP, barbiturates, alcohol, or any of those other drugs were detected by the toxicology lab.

The last part of the report is a compilation of the civilian witnesses who had seen the...who had seen the incident and had reported what they had seen to both s...Riverside Police Department and the CPRC.

That kinda concludes the summary of this report. I'd be happy to try to answer any questions at this point.

COMMISSIONER CORRAL – Is it fair to say that Mr. Brown was actually pointing the Taser right at the officer?

MR. WARNBERG – I don't know where he was pointing it.

COMMISSIONER CORRAL – In that direction, towards...

MR. WARNBERG – Well, you can see from the trajectory analysis the most likely position with his arms.

COMMISSIONER CORRAL – ...and you have four civilian witnesses that claim that they saw that...

MR. WARNBERG – No, ma'am. None of the witness...none of the civilian witnesses...all of the civilian witnesses place Mr. Brown in a sitting position with the exception of Mr. Williams, Kenneth Williams, who said that Mr. Brown was actually standing, approaching the officers. However, none of the civilian witnesses said that they saw Mr. Brown with the Taser in his hand.

COMMISSIONER CORRAL – I have no further questions.

COMMISSIONER BRANDRIFF – But from the DNA evidence, we definitely know he had it in his hand at some point – some part of it, somewhere – he had in his hand, is that correct?

MR. WARNBERG – No, sir. We don't. We know that there was DNA evidence on the Taser. We don't know from where the DNA evidence was taken. In other words. Officer Ellefson had removed the cartridge, the uh...the probe cartridge and had approached Mr. Brown with the Taser in his hand and pushed it against his body to affect a contact tase. Now those probes...he didn't have any shirt on. I mean, those probes would certainly contain Mr. Brown's DNA evidence. When they did the swab for DNA evidence, they did a swab of the weapon. We don't know if they swabbed the sides, the probes, the trigger...we don't know if they swabbed it all. You would expect to find DNA evidence on the probes; you would probably not expect to find DNA evidence on the trigger or the grip if he didn't have it. If he had it in his hand, then you would expect to find it on the trigger or the grip. You see...you see what I'm saying?

COMMISSIONER BRANDRIFF – Yeah, okay...

MR. WARNBERG – So we don't know, based on the DNA...DNA evidence...I mean, we can't say conclusively from the DNA evidence that he had it in his hand.

COMMISSIONER PEARCY – A couple of different questions... Is there a way to kind of marry up the audio recording as it relates to the statements by the officers as to where they were relative to their position as to what we hear? For example, when there is the switch from Officer Stucker to Officer Ellefson with the Taser, and Officer Stucker appears to have been struck with one of the Taser darts at the first shot by Mr. Ellefson and then peels away to take care of himself... I have a hard time kind of finding out where that break in contact by Mr. Stucker in this sequence of events took place...

MR. WARNBERG – Yeah, it's very hard for...

COMMISSIONER PEARCY – ...especially for...especially given the time line involved. We're talking about someone that is...receives a trajectory, turns around, tries to attend to the dart, then turns back, engages with baton strikes, all in the su...I'm trying to...is there a way to...or have you attempted to try and marry that statement up with the audio tape as to where this would have taken place?

MR. WARNBERG – Not exactly in that context. It'd be very difficult to do. You have to look at the entire statement by Officer Stucker and then, you know, try to...try to put that into the tape recording context. It's very difficult to do. I...I have not attempted to do that.

COMMISSIONER PEARCY – Okay, yeah, 'cause it's kinda difficult to even make a determination where one ends and the other begins...

MR. WARNBERG – It is...

COMMISSIONER PEARCY – ...in terms of their ac...activities with the Taser...

MR. WARNBERG – It is. Absolutely.

COMMISSIONER PEARCY – ...'cause it seems that Mr. Stucker is continuously giving commands, almost...or almost continuously giving commands throughout. Umm...

MR. WARNBERG – Well, it appears that way in the transcription. I'm not so sure that it was...in...in reality, at least, according to his statement, there was a time when he...he clearly was...was wounded, I mean, that, uh...with a Taser dart. He recalls that quite vividly and he talks about it in his statement, stepping back from Mr. Brown, turning...turning his body away from and trying to figure out where this tase, where...where he is getting this Taser and sees that there's a dart in his finger. So there's clearly an instant or a time when he is looking away and not giving commands. If you...if...if you...if you just read the transcription, it appears as though it just flows continuously, but in reality, it does not. There is clearly, or at least you would have to assume based on his statement, that there's a break there.

COMMISSIONER PEARCY – Well, maybe for purposes of our report, helpful if that is kinda broken down so that way that there is...cause I mean, again, for any member of the public or anyone else reading this report, although even though listening to the audio tape, it seems to flow together in a more time-compressed fashion than what's being described, especially 'cause it appears that there is the change over right about the time when the handcuff is swinging loose – watch out for the handcuff, it could be used as a weapon – and then that's where...that's about the time, if I recall correctly, Mr. Ellefson's about to engage.

MR. WARNBERG – Yeah, and if you look at the...where, on Page 8 of the report where we've done a summary of the belt recorder statements with the counter time in the event, that was...that was my attempt, I think, to ...to do what you have said, although, you know, without taking each...each line of the tran...and of course, we didn't get the...Officer Ellefson's transcription until yesterday. So, to try to take the...the entire tape...these are just some of the key statements at the time as they applied to both officers' recorders.

COMMISSIONER PEARCY – Well, the reason I'm asking it 'cause...this...basically, it's starting from where's he talking about, "Do it now...watch that cuff. He's swinging that cuff. It's a weapon." Officer Ellefson, "I've got it," appears, and may be incorrect impression, but that's about where mi...Officer Ellefson takes over with the Taser. And then I think, it would be shortly after that where then Officer Stucker would have been himself hit with a dart and maybe have taken out and...what my concern is, is given the compressed time line, and if one is to look at the way the transcript reads...I mean, it's...I'm concerned because part of what we're gonna be looking at is positions of the...of the...of suspect Brown here and the position of the two officers and that time / motion issue.

I think it might be helpful to take a look at that.

In terms of the DNA -- how is it that Officer Ellefson is excluded as a potential donor of the DNA on that particular Taser when, in fact, that was his Taser and he would have been handling it?

MR. WARNBERG -- Well, DNA is...according to Mr. Wu from DOJ, it would be like...it would be similar to the steering wheel on a car. The last person to touch it, that's their fingerprints. So you may very well not expect to find, if somebody else handled the weapon, you may not expect to find Officer Ellefson's DNA on the weapon...at least according to Mr. Wu, but...

COMMISSIONER PEARCY -- You may...you may want to have our report kinda address that issue, 'cause I think that's gonna be a fairly natural question of any of the public that's gonna look at this report and wonder why.

Last question as it relates to your illustrations on the bullet trajectory. Are...were these done with, what I would call, proper scaling of Mr. Brown and Officer Ellefson and what I would call the use of rods through the wound channel to be able to identify exactly the trajectories or is this more or less done kind of on the computer where it's estimated? I'm trying to find out are these actual trajectories or estimated trajectories?

MR. WARNBERG -- These are actual trajectories as described by Dr. McCormick in his autopsy report and follow-up consultation with him. These are measurements as described very vividly in the...in the autopsy report, as well as autopsy photos and consultation with Dr. McCormick.

COMMISSIONER PEARCY -- Well, the reason of my question is, is it based on the location of the...entry and exit wounds or is it also including a trajectory through the wound channel, 'cause sometimes, again, if the body's up here, we've...we're showing three different potential positions and the first one, for example, in Scenario 1, it's...in second shot for each of them, actually, there...but it's more shown in the first shot in Scenario 1, it appears that there'd be the trajectory through the arm, because at least that's why I read it as the dark brown...that would be the wound channel within the arm just like in the shot...second shot, there's kind of a dark brown showing wound channel in the chest...

MR. WARNBERG -- Yes, and we're not trying to depict in these pictures the actual wound. What we're...yes, the dots are positioned according to measurements that were given to...given to us by the autopsy report. In other words, we know the height, the weight of Mr. Brown. Dr. McCormick describes the entry wound as being eight inches from...from...wherever it was...from the top of the head or 16" from where...he starts and he describes that in his autopsy report. So those...those wounds are according to measurements provided by the autopsy...as well as photographs...the review of photographs and then of course, the statements of the officers as far as their position and what was occurring at the time.

COMMISSIONER PEARCY -- But in terms of the illustration, the illustration... 'cause again, most people are gonna be looking at pictures and they're gonna divine from what they see necessarily as opposed to what they read. Are these illustrations inclusive of, for example, the height and the...of Officer Ellefson, inclusive of the accurate location, that if he's standing as it's depicted here, this is, in fact, where...where the gun would be at...at that location, so that it matches up. Or are we taking, more or less, this is what the rods would show coming out of the body and so we're gonna adjust our...

MR. WARNBERG -- No, this...well, what we've tried to do is actually put Officer Ellefson where he...he said he was...

COMMISSIONER PEARCY -- Right...

MR. WARNBERG – ...and what he was doing.

COMMISSIONER PEARCY – And so the figure that we've got here in this illustration of the figure in blue is based on his height?

MR. WARNBERG – Yes.

COMMISSIONER PEARCY – Okay.

And then just one final question, just for consistency sake, we've got in Scenario 1, we've got the relative positioning of Officer Ellefson and Officer Stucker in both the first and the second shot, more or less, that's the smaller 1-by-1 inset, but we don't have that in Scenario 2 and Scenario 3. I'm just assuming it's more or less of an omission, but again, part of what we're trying to make sure our report is consistent and is there a reason why that's not in Scenario 2 and Scenario 3?

MR. WARNBERG – Well, in Scenario 2, uh, yeah, the inset is...is for both...for both positions. If you notice, the...the only change in the position is actually in the arm position. The squatting position remains the same.

COMMISSIONER PEARCY – Well, I guess I'm looking at the relative positioning of Officer Stucker to Officer Ellefson as illustrated in Scenario 1 not being included in Scenario 2 and 3.

MR. WARNBERG – Yeah, because...because there's such a....because there's....there's such a difference in position, in other words, in Scenario 1, in a standing position, Officer Stucker would have to be striking from that position. Then it...then it changes in order to accommodate the trajectory of the second shot...Officer Stucker's position has to change slightly, whereas in Scenario 2, in the squatting position, Officer Stucker's position remains pretty con...I mean, it's pretty constant in both first and second shot.

COMMISSIONER PEARCY – Okay, then we may want to just footnote that on the bottom of the illustrations for Scenario 2 and Scenario 3 so that it's understood that's why that's not there.

MR. WARNBERG – Oh. Okay.

VICE-CHAIR WARD – Yeah, let me address a couple issues. When you were here before, you said you had gotten some recent information that indicated that the tape revealed that Officer Ellefson made a statement just before he shot to "Drop the gun." "Drop the gu.." is what you understood it to say at the time. And I see on this report you've inserted that statement before, just before Officer Ellefson fired the shots.

MR. WARNBERG – Yes, sir.

VICE-CHAIR WARD – And I also noticed in the transcription that we have of Officer Ellefson that statement is in there, in his...the transcription from his belt recorder.

MR. WARNBERG – It is. It's in the transcription as "Drop the gun." It's in the...it's in our be...belt recorder summary as "Drop the gu.."

VICE-CHAIR WARD – "Drop the gu.." Right...

MR. WARNBERG – That's the way we heard it, but in the transcription provided by the Police Department, it's "Drop the gun."

VICE-CHAIR WARD – Right. Now, you said that you had just gotten that information just prior to coming to our last meeting.

MR. WARNBERG – That's correct.

VICE-CHAIR WARD – You mind telling us where that information came from?

MR. WARNBERG – Yes. It came from the FBI agent in Los Angeles.

VICE-CHAIR WARD – Okay. It came from the FBI agent who had conducted a civil rights investigation to see whether or not Mr. Brown's civil rights had been violated.

MR. WARNBERG – Yes. That's correct. I had called...uh, yeah, just before the last summary, I called the FBI agent just to make sure that, you know, there wasn't something that, perhaps, we had missed. And in discussing the, uh...the belt recorders, he explained that, because we had missed it the first time...we just couldn't hear it on the recording. He said that he...he...it had to be pointed out to him as well, and then when he went back and reviewed it, then he was able to hear it. So, we did the same thing...

VICE-CHAIR WARD – Who pointed it out to him?

MR. WARNBERG – We did the same thing. We went back and reviewed the enhanced version of the recording and were able to discern that statement just an instant before the first shot, but we heard it as "Drop the gu..."

VICE-CHAIR WARD – Did he say who pointed it out to him?

MR. WARNBERG – Not...not as an individual, just the, uh...Police Department.

VICE-CHAIR WARD – Okay. My problem with that is, you know, I've read both belt transcriptions. I've read the criminal investigator's interview of both officers and in neither one of those documents have I ever seen where the Taser was responded to as a gun. In this transcription you have here, there's no indication of the Taser being responded to as a gun. And let me...if you will go with me to Page 10... When we deal with Question 4, Brown's position after he was shot. First you have a statement from Detective Cobb, followed by a question. The statement is "The suspect has still got the Taser in his hand. Are you and / or Officer Stucker still giving commands to him?" Officer Ellefson replies, "I'm...I was giving commands for the suspect to get on the ground." Now, if he had just made the statement to "Drop the gun," and if the man still had the gun after he did, wouldn't you think that his statement would be to "Drop the gun" rather than "Get on the ground?" I mean, this is a perfect opportunity for him...you hear them all through that thing, repeating, "Get on the ground, put your hands behind you. Put your hands behind you. Put your hands behind you." But this one situation, that's the only time we hear anything about a gun. And even when the guy asked him what happened after that, he still got the Taser in his hand after he's shot, but he's asking him to get on the ground. To me, it doesn't make any sense.

Another concern that I have, is I've talked to you in between the last time you were here and I shared with you that the goal and objective of this commission in an officer-involved shooting is to try to make a determination as to whether or not these shootings are within policy. And I also shared with you that we are not experts, but we are able to hire experts and that's your agency, to give us an expert opinion in that regard. And, at the end of the day, you know, I see you have here the DNA and fingerprint, the autopsy, the trajectory analysis, and all of those have offered summaries and conclusions. So my question to you is, what is your summary and conclusion in regards to this shooting?

MR. WARNBERG – Well, I've tried...I've tried to lay it out, Mr. Ward, as...as...as clearly as I can in the report.

VICE-CHAIR WARD – But, let me just share with you. You know, you take the trajectory analysis. This person say that they have reviewed witness statements, photographic evidence, autopsy report with additional consultation to Dr. McCormick and the officers' statements – they have reviewed all of that and you've summarized it with a fourth of a page. And if you gave us all the photos, all the witness statements, it would probably be 10 or 12 pages. So you took that 10 or 12 pages and reduced it to a quarter of a page (mic trouble – unintelligible), but yet and still, you want to give us a summary of 24 pages of your...your summary entails 24 pages? Why can't you give us a summary that is clear and concise like the lady gave you from...that did the trajectory analysis?

MR. WARNBERG – Um, well... I think the... In response to that, I think that the, uh, that this report, and all of those pictures and all of those things that I referred to in this first paragraph of the trajectory summary, all of these things are actually included in the autopsy photographs, the autopsy report, and this report is just simply to try to summarize those key areas for the commissioners' consideration, not to try to, you know, regurgitate and add all of that information here. This is simply kind of a guide post. If...if these are things that are of concern to you or to any of the other commissioners with respect to the witness statements, the photographic evidence, the autopsy report, and those sta...additional statements by Dr. McCormick, then CPRC has all of those reports and photographs available for your individual review.

I haven't tried to actually include all of that in this. It's just simply a guide post in a summary format to try to explain the key issues for...for you to try to come to a conclusion on your own.

VICE-CHAIR WARD – Yeah. I understand that. But in addition to the items that you just mentioned that we have, we have all of this other information that you've submitted, you know? We have the officers' statements, we have the witness statements, we've got all of that, so we don't...we don't need to re-read what we've already read several times. What we need is to take all of this...you took the autopsy, the trajectory report, the DNA, and you gave us three important pieces of the puzzle. But as far as I'm concerned, the puzzle is missing. You know, br...your...the other aspects of this investigation...

MR. WARNBERG – Well, I've tried to...

VICE-CHAIR WARD – ...and you're supposed to bring it and so we can put those pieces in place where we can see the big picture.

MR. WARNBERG – Well, I've tried to include those key...those key elements that you're...that you're requesting. With respect to the trajectory evidence, what we were trying to establish through this trajectory analysis is what position Mr. Brown was most likely in at the time of the shooting.

VICE-CHAIR WARD – I understand that.

MR. WARNBERG – And I think that you have that in a, uh... in a summary statement by...not according to me, but according to, like you say, the experts that we've hired, Doreen DeAvery of Applied Sciences who did the trajectory analysis. She's issued...she's given us that statement. Now the same is true with respect to the DNA evidence. If you look at the, uh, if you look at the statements according to Mr. Wu...according to Mr. Wu, he gave us some statements with respect to how to analyze that DNA evidence, and the same is true for the training issues with respect to the Taser equipment. Not only from Appli...Taser International in Scottsdale, who we asked specific questions, but also the training facility in San Diego at the Regional Academy. So we have experts that are giving additional opinions. They're not my opinions; they're opinions that we've sought from other people.

VICE-CHAIR WARD – You hired Applied Graphic Science to do the trajectory analysis...

MR. WARNBERG – Yes, sir.

VICE-CHAIR WARD – ...and they gave you the results of their analysis. That's what you asked them for.

MR. WARNBERG – Yes.

VICE-CHAIR WARD – The same thing you asked them for, that's what we ask you for. That's what we're asking you for.

MR. WARNBERG – Well, you're trying to get...you want me to say whether or not this shooting is in or out of policy?

COMMISSIONER PEARCY – Mr. Chair, I would ask a question of you, sir. We hire an investigator to do exactly that: to investigate and provide the facts, but it's our roles to make...to be the finder of the facts and then, ultimately, arbiter or decider of the facts. I think what you're asking our investigator to do is to do our job for us. I mean, he's...he's done what, I think, we've exactly hired him to do, which was to go out, gather facts, either from the scene or from witnesses, and to gather facts for our benefit from the invest...the other expertises such as those with trajectory, DNA, etc., provide us those expert conclusions, and I think it's our job to take that information, to weigh the evidence that's presented to us and come to a conclusion. I don't necessarily know if it's his job to come to a conclusion and we more or less either ratify or don't ratify his conclusion. And I...I...I guess my question is, what I'm hearing you ask for, Commissioner Ward, is him to give us a conclusion and I don't know where it is that that's part of his job's description.

VICE-CHAIR WARD – So, let me ask you a question. Are you saying, with this report, that you feel comfortable drawing a conclusion based on this report?

COMMISSIONER PEARCY – I think, ultimately, Commissioner Ward, it's our decision to make and draw a conclusion. What I think you're asking for our investigator to do is to give his final conclusion. I think that's what I'm hearing you ask him to provide us. There may or may not be issues, as I've raised some with respect to the report where I think there's some changes or modifications or clarifications that are required. I think our job was to take this report that's he's providing us with respect to the facts as he's investigated and facts as he's providing to us from various experts for us to then add to this report, which would be our conclusion based on the facts that are then provided us. That's our role.

VICE-CHAIR WARD – I understand that.

COMMISSIONER PEARCY – So, I...I guess I'm not quite sure why we're then trying to put the investigator in the position of finding those facts for us. It's his job, if we feel that there's facts that he should continue to gather, to investigate further, to clarify, then I think that's...that's appropriate. But for us to ask him, right now, to give us a conclusion, we're asking him to then do our job. You know...I don't know if that's... Obviously, I haven't seen the contracts of what our investigative firm is hired to do, but I think their job is to investigate and provide us the facts, not to investigate and provide us a conclusion.

COMMISSIONER BREWER – I'm in total agreement with Commissioner Percy. The investigator has spent a great deal of time and hard work and we complimented him on his investigation in earlier meetings and now we're...we're trying to tear him down. And Commissioner Percy's totally correct. It's not up to him to give us a conclusion of that report.

VICE-CHAIR WARD – I'm not asking him to give us a conclusion. This...this lady here, from trajectory analysis, have given us her professional opinion. We're not bound by that, but at least her opinion is there and if we decide to...that that's the correct opinion, not only do we have the co...opinions of this commission, but we have the opinion of an expert in the field who offered it.

So that would be... You know, what we got here would be tantamount to her sending him witness statements, photographic evidence, the autopsy report, with no conclusion and let him draw his own conclusion.

COMMISSIONER PEARCY – Mr. Chair...

VICE-CHAIR WARD – But thank you.

COMMISSIONER PEARCY – Mr. Chair, I got a question for you. Again, a point of clarification. I'm trying to understand if you're saying you're not asking him to draw a conclusion and him being our investigator, what are you asking for 'cause then I'm not clear of what you're asking him to provide. I mean, we have facts that are provided to us by our experts hired by our investigator. Now, in many ways, often times, there's often times differences of opinions between experts. That's, quite frankly, what makes interesting discussions, but it's a question, if...if we don't believe or we don't feel comfortable with the conclusion that may have been drawn by one of the experts, I think we then, of course, could instruct our investigator to have that reviewed a little further and maybe by a different party. But I think, what I'm hearing you ask our investigator to do is then, more or less, take all of the information that he's gathered to synthesize it and then render a conclusion for us to adopt and ratify or not and I don't think that's 1) his job – I don't think that's what he's hired for; and 2) I think that, to do that, you would be having him do our job, and I don't think that's appropriate.

VICE-CHAIR WARD – Let me just give you an example. Maybe I can explain to you by example. Go to Page 9. Okay, you look at Question No. 1. "What was happening when the shots were fired?" This question was asked to Officer Stucker and Officer Ellefson. You got two different answers about what had taken place. You go down to Question No. 2. "In what position was Brown shot?" You got two different answers from these officers that were both on the scene. So, it seems to me, that both of them can't be right, so as a result, the evidence may support one or the other and it may impeach one or the other's credibility and that's what we...you know, that's what we're looking for, you know? So...

COMMISSIONER PEARCY – Right, but Mr. Chair, I think...and your points are very taken and I would suggest that all you have to do is walk across the street any day of the week where business is being conducted at the civil court and sit in a car accident case and you'll see that, often times, there's one witness that says the light was red and another witness that'll say the light was green. My point being, and I'm not trying to be facetious or glib, the fact of the matter is, often times, sometimes, there can be two different points of view of the same occurrence by multiple witnesses. That is not necessarily meaning someone is being deceptive or someone is being intentionally accurate. This is all based on perceptions. It's our role, I think, is to sort through the various testimony we have and it's our role to then come to a conclusion based on the evidence provided. Yes, it's clear, there is some differences in the statements by Officer Stucker and Officer Ellefson. It's also clear, based on some expert testi...or witness...expert evidence provided to us, for example, through the trajectory analysis, that it is probably more likely than not that shooting Scenario 1, as proffered by Mr. Ellefson, is not an accurate recollection. Now, whether or not Officer Ellefson is recalling deceptively, being intentionally or if he's just recalling intentional or erroneously unintentionally, it's a high stress factor. That's for us to look at and for us to include in our analysis. That's not for our expert and our investigator to do. That's our job.

VICE-CHAIR WARD – Are there any other questions from the commissioners?

COMMISSIONER GARCIA – Yes, I have a question. Mr. Warnberg, in reference to the Taser guns. Were you given the opportunity to see or examine those...either of the similar Taser guns that the officers used when you did your report?

MR. WARNBERG – Excuse me... Seeing, from the standpoint that we had photographs of both weapons, actually, physically, seeing the weapons...no we were not.

VICE-CHAIR WARD – Any other questions?

MR. WARNBERG – Er...Excuse me, Mr. Garcia. I stand corrected on that. From seeing the...from the standpoint of seeing, we were provided photographs of Officer Ellefson's weapon. We were never provided photographs or allowed to see Officer Stucker's weapon.

COMMISSIONER CORRAL – I think that you did a very good job putting this together and it answered a lot of my questions that I had. One of the questions that I...I think you might remember me asking "was he sitting or standing" and I think this...this captures where he was and it also defines the um...the use of force and the escalation that the officers followed and I...I just want to say I think you did a good job clarifying it.

COMMISSIONER PEARCY – Yeah, one, uh...one potential other thing I would like to see perhaps added into this would be photographs. We've got two different Tasers that were involved. If we could just have inclusive a photograph of each Taser or the representative of that particular model and its shape so that way we can identify what that particular Taser looks like. There's older Tasers that look sorta like a flashlight and there's newer Tasers that look sort of like a gun and I don't know if the X26 versus the M26 are similarly shaped or differently shaped, but it might be helpful, as well, for those who review the report, to be able to identify the shape of that Taser.

MR. WARNBERG – Okay.

VICE-CHAIR WARD – Thank you, Butch.

Public Comment

Now we'll take public comments. Mary Shelton...

Mary Shelton

Hi. I'm Mary Shelton and I'd like to thank Mr. Warnberg for his detailed report. I did have a couple questions, but Mr. Ward touched on several of them. First of all, it's pretty disappointing that the DNA test was done the way it was done. First of all, one would think that you would take multiple swabs and multiple samples from different portions of the Taser, including the areas where he would be most likely to have contacted with it and areas that were less likely, like the trigger and the handle. What I saw here was I saw that they took two...there were at least two DNA samples, none of which were...belonged to those two officers. So I was kinda confused when they said it was the last person who touched it because there's one that's a positive identification for Mr. Brown and then there's these...at least two others and from what I understand, they're all low-level samples, which means it's not a large sample. But like he said, they don't know where they took the sample from, and if you don't know where you took the sample from, there's not much you can do about it because he had co...he had multiple contacts with that Taser. He was, um...dri...he was contact stunned, according to this, anywhere from three to five times 'cause Ellefson, I believe...I counted 'em in his thing where he said maybe three times, but then the Taser discharge was a little bit different and it was five times. So there's no real conclusion and that was a very important piece of evidence, if there was DNA on it. I mean, of course, if there wasn't, it didn't rule it out, but it's just really confusing.

And the thing with the belt recording that's confusing is that, okay, you have a transcript where it said the...wri...that was the one that came in yesterday...ther...the Police Department said it said "Drop the gun." But there's...as you notice, and I don't know if Mr. Ward brought this up, I believe it says "Unidentified Speaker," and it's not attributed – is that accurate? – it's not attributed to either one. And before, they made it seem like it was a definite identification for, um, Mr. Ellefson, but here it says "unidentified Speaker," so again, there's no evidence that it...it was his statement if they can't even identify it because someone else could have been standing there, saw Ellefson with the gun and was shocked and said...you know, may...they may have said it or it may have been a similar statement saying, "He's got a gun," or something. There's no definite evidence tying it to Mr. Ellefson according to that transcript. I mean, if it's an unidentified speaker, that's not saying it's Officer Terry Ellefson, is it?

And, um...so that was another thing, and I had a little bit of confusion because you have two transcripts. Neither of them have a timeline. The...the partial one last time had a time line. These ones don't and the reason why that's confusing is because on one of them, you have an unidentified speaker saying, right before the shots, "Drop the gun," and in the other one, Stucker's, you have a speaker who's been identified as Terry Ellefson right before the shot saying, "Put your..." I think it was, "Put your hands behind your back." And there's no indication, time wise, to say when each statement was said and I think that's...you know, like, because they're two separate recordings and each recording only, apparently, caught one thing, it's gonna be very hard to compare who was saying what, especially when one of the speakers was identified.

I also noticed on the Tasers that is was hard to find a time line on that because, if you notice, Stucker's Taser said... the timing for Stucker's Taser was 3:13:55 for the first dar...discharge; the one for Ellefson was 13:48, so obviously, there's some sort of time problem because there's no way that...I mean, Ellefson discharged his Taser after Stucker, so there's something wrong with the Tasers in terms of how their timing is because, um... 'cause from what I understand, the incident was around 2 o'clock and you have two Tasers that are timed earlier and they're not even timed in the right sequence and that could have been a useful tool, if you could have standardized the two to determine when the Taser strikes occurred, particularly the...the dry stuns, because on Ellefson...on Stucker's you can see the two that he cycled with the probes and then, there's a little bit later, there's the contact one and he wa...he was attempting when he was fired on by Ellefson's probe. But on Ellefson's, you just see the se...I guess, the ones he listed in his reports; the seven. So... And...and there's only...I mean, I didn't hear references in the report or the statement that Ellef...that Ellefson had fired seven...two, you know, the two and the five. And so um...and I think that was...that's another source of information where they could have, um...you know, found out more information.

Um...but the Tas...um, and the Taser thing that's confusing is, like, when did Ellefson fire his Taser all those many times, because Stucker was busy turning around to deal with the... 'cause he had been shocked by Ellefson's Taser probe in his hand, so he did receive a shock, which is probably one of the reasons why the Taser didn't work on Brown because it was going two different ways and it was probably wasn't a good arc. But then we don't know how much time he was spending turning around dealing with the probe because when he turned back around, from what it says in the report, that's when, um...he...you know, they...the part when he saw...allegedly saw that um, Brown had the Taser in his hand. And so...and I...and I think that...the analysis, like you said, it's helpful, but I just...I mean, it's not clear. I mean, it's based on a legal opinion of an expert whether or not, you know, Brown was on the ground or whether it was up. It seems to say, according to the auto...autopsy report, that he was squatting or sitting on the ground, like that lady said. That seems the most logical, which would go along with what the...the civilian witnesses said and also what Officer Stucker said, because remember, he was squatted on the ground when he was hitting him with the ba...baton and then he heard the shots. But then the gun...it brings him to problem with what Elle...what Ellefson had said and that's kind of something that has to be dealt with, too.

And so, um, I think this is gonna be a discussion ahead. I mean, I did have some question about the briefing where...because it wasn't clear whether the...the...Cannon had said whether...whether

Stucker had hit the...hit him with the baton after he saw the Taser or whether it was before because in the briefing, it actually made it seem like it was before. And now, in this analysis, and I guess according to the statements, it was after.

So I just had some of these questions and I thought I would raise some of these issues.

Thank you.

VICE-CHAIR WARD – Dr. Bailey...

Dr. Ron Bailey

Yeah, Dr. Ron Bailey. I won't touch on Mr. Warnberg's scenario, which I thought was good. With the foundation, however, of hearing a portion of the tapes, as a medical doctor and community member, the question that I would pose to you is 'Did the officer / officers have any experience demanding first response to an individual with an acute psychotic break?' And I think this is critical, because, if you listen to the tapes closely, what we see is not only somebody who has a psychosis, but it seems as though, with ever command directed from the officers, there is a continued escalation of issues.

Thank you.

RPD Training

Deputy Chief John DeLaRosa introduced two members of RPD's Training Division: Lt. Vance Hardin and Sgt. Cliff Mason. Lt. Hardin updated the Commission on the status of RPD's training program.

Mary Shelton

Ms. Shelton noted that she didn't hear much about diversity training, but said it may be that that's being done through the Human Relations commissioners. She also had a number of other questions regarding:

- asked about POST requirements for Taser use
- the qualifications and screening procedures for Field Training Officers (FTO's)
- the training program for dealing with the mentally ill
- Watch Commander training and if it was extended to both lieutenants and sergeants
- pretext stop training during roll call

Dr. Ron Bailey

Dr. Bailey asked whether RPD has looked at how many individuals involved in use of force incidents has a background in the military and if preferential consideration is given to recruits with military backgrounds.

Dr. Bailey also said that the policing the mentally impaired is a "venue" by which the community can come together with RPD. He said that issues regarding the mentally impaired should not marginalize issues regarding those who are medically impaired. He noted that the last several officer-involved death cases had some common themes:

- all were impaired in some way
- disproportionate number were black
- all were "offender or presumed offenders who became victims"
- all are dead

Dr. Bailey believes that officers should be trained in dealing with the medical, as well as psychiatric issues and feels the curriculum should be broad.

Dr. Bailey also has concerns regarding training issues for first responders.

As Vice-Chair Ward prepared to discuss Item 7, Commissioner Percy noted the late hour and proposed that the remaining agenda items be held over to the next meeting.

After a brief discussion, Commissioner Percy made a motion to move the remaining portion of the agenda to the next regularly scheduled meeting. Commissioner Brewer seconded. Motion passed unanimously.

At this time, Vice-Chair Ward presented outgoing commissioner Bob Garcia with a plaque. Vice-Chair Ward expressed the Commission's appreciation for Mr. Garcia's 6-plus years of service on the Commission and to the City.

Adjournment

The Commission adjourned at 8:40 PM.

Respectfully submitted,



PHOEBE SHERRON
Sr. Office Specialist

BROWN CONCLUSION PAGE

1 – Preamble:

The finding reached by the Commission, as stated in this report, is preliminary and based solely on the information presented to the Commission by the CPRC investigator and details obtained from the RPD criminal investigation case files. If necessary, the Commission will render an additional finding based on its review of the Internal Affairs Administrative Investigation. Because the administrative investigation contains peace officer personnel information, it is considered confidential under State law. Any additional finding made by the Commission that is based on the administrative investigation would, therefore, be confidential and could not be made public.

2 – Finding:

By a vote of 6 to 1, The Commission finds that the officer's deadly use of force was within policy (RPD Policy 4.30 – Use of Force Policy) based on the objective facts and circumstances that we have been able to determine through our investigation.

3 – Rationale for Finding:

The Commission's finding is based on the following observations, analyses, and conclusions drawn after careful review and deliberation of information provided by the CPRC investigator and included in RPD criminal investigation case files:

1. The officers attempted to gain control of the situation by using increasing levels of force based on the conduct of Mr. Brown. (p. 3 – Summary of Events). Mr. Brown was increasingly resistive and combative by his conduct, which included physical resistance to the point that he threw Officer Ellefson from his back (p. 3) during the cuffing process and then used the cuff as a weapon (p. 10).
2. The officers used various tools provided in a use of force situation which included verbal commands, hand controls, Taser, expandable baton, and control devices prior to the utilization of deadly force (p. 3 – Summary of Events).
3. When each officer deployed their Taser on Mr. Brown, he did not exhibit the normal or anticipated effects. As a result, officers were not able to gain compliance or control of Mr. Brown. This would also reasonably contribute to an officer's fearful state of mind in order to gain compliance and control of an aggressive and resistant suspect.
4. Mr. Brown gained control of Officer Ellefson's Taser and, by the statements of both officers (p. 7 and p. 9), handled it in a manner that would reasonably be perceived by Officer Ellefson as an instrument that would cause a threat of great bodily harm to either officer.
5. Mr. Brown was not wearing light colored clothing or anything that would present a contrast to a dark object in his hands. Therefore, a witness who is some distance away may not necessarily be able to easily discern a dark object in Mr. Brown's hand as would the officers, who were in closer proximity. Based on the statements of both Officers, the Commission concludes that Mr. Brown was in possession of the Taser at the time of shooting.

BROWN CONCLUSION PAGE

6. Based upon the statements of Officer Stucker that Mr. Brown was "either squatting or seated on his butt with his legs in front of him." (p. 19) and civilian witnesses who state that Mr. Brown was in a sitting position (p. 20); and looking at the downward direction of wound path of gunshot wound to the left arm (p. 14) and gunshot wound to right side of chest (p. 15), the Commission concludes that there is the greater likelihood that Mr. Brown was in a seated position at the time of the shooting. Based upon the statements of Officer Ellefson that "the suspect stood – kind of pushed forward and lunged forward directly at me with the Taser," (p. 17) the Commission concludes that Mr. Brown, with Taser in hand, was likely making motions to get up from his seated position.
7. Although neither officer has recalled making the statement, "Drop the gun." (p. 10 footnote) the belt recorder picked up the statement (Section C, p. 14, Line 1) which the Commission believes infers that Mr. Brown had something in his hand resembling a gun. The Commission observes that the Taser, in this instance, based on its shape, color, and materials, resembles a handgun.
8. Officer Ellefson reasonably believed that Mr. Brown had possession and control of the Taser.
9. The Taser, in Mr. Brown's possession, reasonably presented a threat to Officer Ellefson and his partner, Officer Stucker, in such a way that Officer Ellefson or his partner could be disabled and, and as such, required the use of deadly force to overcome that potential.

4 - Critique/Evaluation of Technical Aspects of Investigation:

1. DNA swab samples – The Commission believes that the manner in which the DNA samples were gathered did not provide the Commission with usable information and that multiple DNA samples should have been taken from different parts of the Taser and provided to DOJ criminalist for examination.

Note: According to supplemental report included in RPD case files, a swab sample for possible DNA was taken from the handle and frame of Taser (Section F, p. 1). The CPRC investigator indicated that according to the DOJ criminalist investigator a single swab was taken from a Taser and presented for examination (p. 13). The DNA analysis was inconclusive.

2. Follow-up questions/interviews – The Commission believes that the investigation should have included additional follow-up questions and/or follow-up interviews especially in instances where there may appear to be conflicting statements made by witnesses.

5 - Critique/Evaluation of Officers' Tactics:

1. While the Commission found that the officers attempted to gain control of Mr. Brown by using increasing levels of force within policy guidelines, it is recommended that officers be trained in tactics and techniques to further enhance their ability to control the escalation/de-escalation of force. For example, in a situation where the deployment of Taser has not resulted in the anticipated effect, officers should be trained to generally **step away, disengage from suspect, if possible, and to remain within a safe range**

to monitor the suspect until further help arrives in numbers sufficient to reengage the suspect with force sufficient to overcome the resistance of the suspect.

6 - Additional Observations and Recommendations:

1. Taser Markings – A recommendation is made by the Commission that Tasers used by the Riverside Police Department should have some form of highly visible marking such that they can be more easily identified as a less than lethal object.
2. Taser Training – A recommendation is made by the Commission that the Riverside Police Department should develop standards and provide training regarding appropriate action that Officers should take in the event of Taser loss or take-away while attempting to gain control of a suspect. In developing these standards and training, distinction should be drawn between loss / take-away of Taser with cartridges versus loss / take-away of Taser without cartridges.
3. **Response time – additional officers needed (place holder / reminder for further discussion)**
4. **Training / Program – how to recognize and deal with mentally ill individuals.**



Officer kills man Tasers couldn't stop

SHOOTING: The suspect grabbed at a weapon, officials say. It's the officer's second slaying.

10:00 PM PDT on Tuesday, April 4, 2006

By SARAH BURGE
The Press-Enterprise

RIVERSIDE - A Riverside police officer fatally shot a 30-year-old man outside a University Avenue motel Monday afternoon because he grabbed the officer's Taser weapon, police officials said Tuesday.

Before he was shot, police said, the man had already been shocked twice and hit with a baton.

A Riverside County coroner's news release identified the man as Lee Deante Brown of Riverside.

Sgt. Mike Cook identified the officer who shot Brown as Terry Ellefson, a three-year veteran of the department. It was the second fatal shooting involving Ellefson in the past few months. He fatally shot a man Nov. 15 on Old Mill Road in what police described as the suspect's attempt to commit suicide by provoking an officer to shoot him. Officials said the man pointed a gun at police.

Cook said police received several calls just before 1:30 p.m. Monday reporting a person who was screaming, exposing himself and running in and out of traffic in the area of University Avenue.

Officer Michael Stucker caught up with Brown outside the Welcome Inn of America at University and Ottawa avenues, Cook said.

Brown did not comply with Stucker's orders and Ellefson arrived in response to a call for backup, police said in a news release.

Cook said Brown was "physically non-compliant," so both officers used their Tasers and one officer used his baton in an attempt to subdue him. Cook said the officers shocked Brown twice. Cook said the department was still gathering information, so he was not sure how many times Brown was hit with the baton.

According to the news release, the Tasers and baton were ineffective, and the struggle between Ellefson and Brown escalated.

Ellefson "lost control" of his Taser and Brown grabbed it, the release said. Cook said he was not sure whether Ellefson dropped the Taser or Brown took it from him.

Ellefson feared that the Taser would be used against him, the release said, and fired his gun at Brown, hitting him twice. Both Ellefson and Stucker have been placed on paid administrative leave, Cook said.

Brown died at Riverside Community Hospital, officials said.

Racheal Bacon, 19, who witnessed the shooting, said Brown appeared to be disoriented during the struggle with police.

"You could tell he had no idea what was going on," she said. "You could tell that he was really scared."

Bacon said she did not see Brown grab the Taser.

When Brown was shot, she said, "He was basically injured and on the ground."

James Bell, a passerby who said he watched the confrontation unfold from the sidewalk, wondered why the officers used Tasers on Brown in the first place.

"He wasn't hurting anybody," Bell said.

Reach Sarah Burge at (951) 368-9642 or sburge@PE.com

Sherron, Phoebe

From: Mike Blakely
Sent: Friday, November 17, 2006 12:54 PM
To: Payne, Pedro
Cc: Sherron, Phoebe; John De La Rosa; Edward Blevins
Subject: Re: Brown OID case

Follow Up Flag: Follow up
Flag Status: Red

Pedro,

A transcription of Officer Ellefson's belt recorder was not made. The criminal investigators are arranging for this recording to be transcribed, and I will insure that a copy of that transcription is sent to you as soon as it is available.

MJB

>>> Payne, Pedro 11/15/2006 2:09 PM >>>
John,

Would it be possible to get a copy of Officer Ellefson's transcript of his belt recorder during the Brown OID incident? We received a transcript of Officer Stucker's belt recorder but did not receive a copy of Officer Ellefson's recorder. Please advise. Thank you very much.

Pedro R. Payne, Ph.D.

Executive Director

Community Police Review Commission

City of Riverside, CA.

(951) 826-5676 - Office

(951) 826-2568 - Fax

(951) 830-7452 - Cell

Riverside Police Department
Individual Training Activity

To: April 04, 2006

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STUCKER, MICHAEL P.

Personal

Agency: Riverside Police Department

Employment

<u>Property</u>	<u>Value</u>	<u>From</u>	<u>Through</u>
Active Status	Active	03/28/2003	
Duty Status	Full Duty	03/28/2003	
Time Status	Full Time	03/28/2003	
Rank	Ofcr	03/28/2003	
Work Unit	Field Ops	03/28/2003	
Station	Lincoln	03/28/2003	
Division		03/28/2003	

Training Completed In 2006

<u>TMS #</u>	<u>Ended</u>	<u>Subject</u>	<u>Certification</u>	<u>Compl.</u>	<u>Grade</u>	<u>Score</u>	<u>Trng. Time</u>
- 1-5131	03/22/2006	Vehicle Racing/Mod Veh Enforcement	CA-POST	✓	P	0	04:00
Totals for 2006:			Completed 1 of 1 Modules		Training Time: 04:00		

Training Completed In 2005

<u>TMS #</u>	<u>Ended</u>	<u>Subject</u>	<u>Certification</u>	<u>Compl.</u>	<u>Grade</u>	<u>Score</u>	<u>Trng. Time</u>
- 1-4450	10/17/2005	TRAIN CROSSING TRAINING		✓	P	0	00:12
- 1-4448	10/08/2005	SHOOTING AT MOVING VEHICLES		✓	P	0	00:18
- 1-4464	10/04/2005	PERIMETER TRAINING		✓	P	0	00:12
- 1-4371	08/20/2005	USE OF FORCE POLICY		✓	P	0	00:12
- 1-4310	07/31/2005	PRETEXT STOP TRAINING		✓	P	0	00:30
- 1-4308	07/26/2005	LEGAL UPDATE - SMITH V CITY OF HEMET		✓	P	0	00:24
- 1-3805	06/23/2005	BUILDING SEARCHES/FORCE ON FORCE		✓	P	0	05:00
- 1-3801	06/23/2005	TRAFFIC STOPS/FORCE ON FORCE		✓	P	0	05:00
✓ 1-3797	06/22/2005	S&K-TASER TRAINING	CA-POST	✓	P	0	02:00
- 1-3793	06/22/2005	S&K-LESS LETHAL	CA-POST	✓	P	0	04:00
✓ 1-3789	06/22/2005	DEALING WITH 5150 SUBJECTS		✓	P	0	04:00
- 1-3781	06/21/2005	FIREARMS TACTICAL PISTOL/SHOTGUN	CA-POST	✓	P	0	08:00
- 1-3785	06/20/2005	S&K-SCENE ASSESS & USE MOD #19	CA-POST	✓	P	0	02:00
- 1-3777	06/20/2005	S&K-DEFENSIVE TACTICS UPDATE	CA-POST	✓	P	0	08:00
- 1-4270	06/03/2005	CLETS-LESS THAN FULL ACCESS OPERTR/2005		✓	P	0	00:30
- 1-4123	04/17/2005	UNIFORM PURSUIT POLICY 4 16 - IV		✓	P	0	00:18
- 1-3503	04/08/2005	GANG AWARENESS	CA-POST	✓	P	0	24:00
- 1-4056	03/21/2005	UNIFORM PURSUIT POLICY 4 16 - II		✓	P	0	00:18
- 1-3906	03/02/2005	JUVENILE DETENTION FORMS-PPS		✓	P	0	00:18
- 1-3720	02/19/2005	JUVENILE DETENTION FORMS-PPS		✓	P	0	00:18
- 1-3995	01/21/2005	DUI VIDEO SERIES 3		✓	P	0	00:18
- 1-4228	01/11/2005	FIREARMS TRAINING		✓	P	0	01:00
Totals for 2005:			Completed 22 of 22 Modules		Training Time: 66:48		

Training Completed In 2004

Riverside Police Department
Individual Training Activity

April 04, 2006

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STUCKER, MICHAEL P.

Training Completed In 2004

(Continued)

TMS #	Ended	Subject	Certification	Compl.	Grade	Score	Tng. Time
- 1-3969	12/20/2004	DUI VIDEO SERIES 1		✓	P	0	00:30
- 1-4021	12/07/2004	TRAFFIC COLLISION UPDATE		✓	P	0	00:24
- 1-3927	06/18/2004	TASER TRAINING UPDATE RECERTIFICATION		✓	P	0	00:30
- 1-2725	05/21/2004	SEARCHES (POLICY 4 31)		✓	P	0	00:24
- 1-3765	05/20/2004	DEALING WITH THE MENTALLY ILL		✓	P	0	00:30
- 1-3674	05/07/2004	USING COVER - A.I.M.S. VIDEO		✓	P	0	00:24
- 1-3744	04/22/2004	GLOCK MAINTENANCE VIDEO		✓	P	0	00:24
- 1-3022	04/16/2004	OFFICER INVOLVED SHOOTINGS. INV		✓	P	0	00:42
- 1-3023	03/25/2004	IMPACT WEAPON - FLASHLIGHT		✓	P	0	00:30
- 1-3773	02/26/2004	PURSUIT POLICY - BRAKE FADE		✓	P	0	00:30
- 1-3767	02/12/2004	USE OF FORCE POLICY		✓	P	0	01:00
- 1-3740	02/05/2004	SAFETY CITE PROGRAM		✓	P	0	00:30
- 1-2650	01/30/2004	EXPANDABLE BATON/MID-RANGE		✓	P	0	04:00
- 1-3527	01/29/2004	CLANDESTINE METHAMPHETAMINE LAB		✓	P	0	00:30
- 1-3760	01/25/2004	OF CR INVLD SHOOTING - POLICY 4 8		✓	P	0	00:36
- 1-3756	01/23/2004	SHOTGUN TRAINING		✓	P	0	00:30
- 1-4068	01/09/2004	FIREARMS TRAINING		✓	P	0	01:00

Totals for 2004:

Completed 17 of 17 Modules

Training Time: 12:54

Training Completed In 2003

TMS #	Ended	Subject	Certification	Compl.	Grade	Score	Tng. Time
- 1-2613	12/08/2003	DOMESTIC DISPUTES-ANALYSIS/OFCRS KILLED		✓	P	0	00:30
- 1-2149	11/30/2003	LABOR DISPUTE		✓	P	0	00:12
- 1-2107	11/09/2003	HANDLING PRISONERS-ANALYSIS/OFCRS KILLED		✓	P	0	00:30
- 1-2065	11/02/2003	STOP STICK DEPLOYMENT		✓	P	0	00:12
- 1-2638	10/26/2003	JUVENILE DETENTION FORMS-PPS		✓	P	0	00:06
- 1-2414	09/26/2003	SUPV ROLE IN TRG TELECOURSE CA-POST		✓	P	0	28:00
- 1-2622	09/18/2003	AGGRESSIVE SOLICITATION		✓	P	0	00:12
- 1-2612	08/31/2003	OLEORESIN CAPSICUM UPDATE		✓	P	0	00:30
- 1-1538	07/14/2003	HOBBLE TRAINING		✓	P	0	00:24
- 1-1573	07/10/2003	CAROTID TRAINING		✓	P	0	00:18
- 1-1719	07/05/2003	LESS LETHAL SHOTGUN TRAINING		✓	P	0	04:00
- 1-1612	07/01/2003	LESS LETHAL SHOTGUN TRAINING		✓	P	0	04:00
- 1-1432	06/26/2003	E.P.A.S (INTOXILYZER) TRAINING		✓	P	0	04:00
- 1-1522	06/13/2003	TACTICAL BLDG/ROOM SEARCHES		✓	P	0	00:18
- 1-1365	06/05/2003	LESS / FULL ACCESS OPERATOR (DOJ/NCIC)		✓	P	0	00:30
- 1-1482	05/16/2003	DETENTION. ARREST & PAT DOWN SEARCHES		✓	P	0	00:12

**Riverside Police Department
Individual Training Activity**

1. April 04, 2006

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ELLEFSON, TERRY L.

Personal

Agency Riverside Police Department

Employment

<u>Property</u>	<u>Value</u>	<u>From</u>	<u>Through</u>
Active Status	Active	08/22/2002	
Duty Status	Full Duty	08/22/2002	
Time Status	Full Time	08/22/2002	
Rank	Ofcr	08/22/2002	
Work Unit	Field Ops	08/22/2002	
Station	Lincoln	08/22/2002	
Division			

Training Completed In 2006

TMS #	Ended	Subject	Certification	Compl.	Grade	Score	Tng. Time
- 1-5135	05/12/2006	Interview & Interrogation Techniques	CA-POST	✓	P	0	40:00
- 1-4964	03/30/2006	Building Entries		✓	P	0	09:00
- 1-4962	03/29/2006	GANG TRAINING		✓	P	0	08:00
- 1-4960	03/28/2006	FIREARMS/TACTICAL SHOTGUN		✓	P	0	04:00
- 1-4958	03/28/2006	DEALING WITH 5150 SUBJECTS		✓	P	0	04:00
- 1-4956	03/27/2006	S&K-SCENE ASSESS & USE MOD #19	CA-POST	✓	P	0	02:00
- 1-4954	03/27/2006	S&K DEFENSIVE TACTICS UPDATE	CA-POST	✓	P	0	08:00

Totals for 2006:

Completed 7 of 7 Modules

Training Time: 75:00

Training Completed In 2005

TMS #	Ended	Subject	Certification	Compl.	Grade	Score	Tng. Time
- 1-4579	11/08/2005	GANG UPDATE & MOTEL ABATEMENT		✓	P	0	00:24
- 1-4396	10/28/2005	SPECIAL WEAPONS AND TACTICS	CA-POST	✓	P	0	80:00
- 1-4443	10/07/2005	FIRST AID/CPR		✓	P	0	08:00
- 1-4029	04/04/2005	UNIFORM PURSUIT POLICY 4.16 - I		✓	P	0	00:18
- 1-4034	03/27/2005	UNIFORM PURSUIT POLICY 4.16 - I		✓	P	0	00:30
- 1-3844	03/01/2005	JUVENILE DETENTION FORMS-PPS		✓	P	0	00:18

Totals for 2005:

Completed 6 of 6 Modules

Training Time: 89:30

Training Completed In 2004

TMS #	Ended	Subject	Certification	Compl.	Grade	Score	Tng. Time
- 1-3965	12/19/2004	DUI VIDEO SERIES 1		✓	P	0	00:30
- 1-3308	12/09/2004	GANG AWARENESS, ADV	CA-POST	✓	P	0	24:00
- 1-3326	11/17/2004	SUICIDE BOMBING THREAT ASSESSMENT		✓	P	0	03:00
- 1-3163	08/30/2004	M-26 & X-26 TASER CERTIFICATION		✓	P	0	02:00
- 1-3120	08/20/2004	DEFENSIVE TACTICS UPDATE		✓	P	0	04:00
- 1-3136	08/16/2004	MISSION PLANNING FOR FIELD OPERATIONS		✓	P	0	00:18
- 1-2909	07/29/2004	EPAS TRAINING		✓	P	0	03:00
- 1-2852	06/16/2004	M-26 TASER RECERTIFICATION		✓	P	0	00:42
- 1-2282	05/05/2004	DRUG ABUSE RECOGNITION, INTRO	CA-POST	✓	P	0	24:00
- 1-3742	04/20/2004	GLOCK MAINTENANCE VIDEO		✓	P	0	00:24

SECTION THREE: RECOMMENDATIONS

XII. Policy, Procedure and Practice Recommendations

The CPRC recognizes that police officers encounter situations requiring split-second decisions. Officers' ability to respond to these circumstances depends on many factors, including regular training. Part of the training cycle is after-the-fact assessment of critical incidents. Alternative modes of response may be considered and evaluated for consideration in future incidents.

The CPRC's purpose in suggesting the following items is not to unduly criticize the involved employees. However, this incident provides an opportunity to critically assess the tactics used by officers. While the CPRC does not hold itself out to be a body of tactical expertise, the Commission does review officer response more than the average community member.

The Commission offers the following suggestions for consideration by RPD:

1. Routinely dispatch Supervisors to potentially volatile calls.

RPD Dispatch received information that a subject (Brown) was acting irrationally, including jumping on cars, stripping naked, and yelling and screaming at people.

The information suggested that Brown was either suffering from acute mental illness, or under the influence of drugs. In either case, there was a substantial likelihood that police contact might result in the use of force.

Under any such conditions which suggest force will likely be used, routinely dispatching supervisors to the incident could be beneficial. Supervisors are responsible to coordinate and direct officers, and can prevent officers from getting over-involved in situations. Supervisors usually have more experience than officers.

In this case, no supervisor was dispatched initially. Additionally, when Officer Stucker requested a supervisor within a minute after arrival, Dispatch had difficulty locating an available supervisor to respond.

According to radio traffic, Dispatch was not aware that at least one supervisor (Witt, Sam 245) had gone off-duty (radio traffic CD, approx. 4:40). Dispatch attempted a second sergeant (Sam 150), who was also busy. Finally, a call for "any sergeant" resulted in response of a sergeant (Sam 360). A supervisor's presence and direction at the scene from the start might have produced a different outcome.

2. Train first-arriving officers to await the arrival of back-up before contacting a potentially confrontational subject whenever possible.

Officer Stucker arrived at The Welcome Inn at about 1:52 p.m. Stucker immediately exited his car to contact Brown.

Upon hearing Stucker arrive, Officer Ellefson advised Dispatch that he was enroute to the call, with his car sirens audible in the background. At the time, Stucker had not broadcast any call for help. Ellefson arrived at about 1:55 p.m.

The first call to Dispatch was received at about 1:26 p.m., and several calls were received thereafter. During the 25 minute time lapse, no callers reported any immediate threat to other persons (although they did report that residents were considering attacking Brown because he exposed himself).

Based on all of the information that Dispatch received, Brown did not pose an immediate threat to public safety. It would have been reasonable, and preferable, for Officer Stucker as the first-arriving unit, to wait in the area until Officer Ellefson arrived, a time of less than 3 minutes.

As an additional safety point, the fact that the first arriving officer will “stand by,” will preclude the back-up officer from driving in emergency mode to assist. Emergency driving poses 2 potential problems:

- First, the majority of California peace officers killed in the line of duty in the last two years have died in traffic accidents. An officer cannot assist if the officer does not safely arrive.
- Second, an officer who drives any distance under emergency driving conditions is subject to an adrenaline response even before subject contact. Adrenaline creates a “flight or fight” response in the body, which may incline the officer to action that might not be undertaken in a more “normal” response.

If Stucker, Ellefson, and a supervisor had all been on scene prior to proceeding to contact Brown, all may have benefited from the safety in numbers.

3. Develop additional methods for dealing with mentally ill.

Upon contact, Stucker found Brown to be delusional, speaking in loud, no-stop dialogue and making references to God and devils. Brown’s behavior could have been the result of either acute drug intoxication, or acute mental illness. In fact, Brown apparently was suffering at the time from acute paranoid schizophrenia.

In this case, Stucker could not reasonably determine the cause for Brown’s conduct. Regardless of the cause, Brown presented a possible safety threat to Stucker, which was not lessened because the source was mental illness, not drugs.

However, had mental illness professionals been available for immediate response, they may have been able to assist, either by recognizing Brown personally, or his symptoms. Medical personnel may have been able to intervene (although irrational persons may be a safety threat to medical personnel as much as to officers.)

The CPRC is aware that this case has increased the community dialogue about mental illness on-scene assistance to police. The CPRC encourages efforts to provide police with another resource, as well as increasing the amount of mental illness training provided to officers.

4. Disengage and reassess when initial tactics do not create the desired result, when possible.

Officer Stucker’s first taser deployment was effective in controlling Brown. After being struck with the taser darts, Brown went down to the ground as directed by Stucker, and stayed there until Ellefson began handcuffing. However, when the taser was momentarily disabled, Brown was able to break free of Ellefson, and regain his feet.

Ellefson then fired his taser at Brown, but the result was ineffective. Both officers then attempted to deliver “contact tases” to Brown, with minimal effectiveness. According to taser training provided by RPD to the CPRC, officers are aware that contact tasing is less effective than taser-darting.

Once officers identified that taser use was not producing the desired result, it may have been preferable for the officers to disengage, and request more assistance before proceeding. Nothing in the 9-1-1 calls indicated that Brown was attacking or threatening civilians. Brown's first response to Stucker was to move away to a corner. It may have been that had the officers removed themselves to a distance from Brown, he might have stayed in the same location until additional officers arrived to assist.

Based on the number of officers who responded after the "10-33" status was broadcast, there were many officers available only minutes away.

Disengaging after the first contact tase proved ineffective may have prevented Officer Ellefson from subsequently losing his taser to Brown, and the lethal consequences that followed.

5. Redeploy out of danger range when possible.

Even if the officers had not disengaged after the initial tases proved ineffective, Officer Ellefson's subsequent loss of his taser presented a second opportunity to disengage. By remaining engaged both officers were at risk from injury since Brown had obtained Ellefson's taser.

Once the officers recognized that Brown gained control of the taser, it would have been preferable for the officers to remove themselves a safe distance away from Brown. The distance necessary for safety would have been only a few feet. Ellefson's taser cartridge had already been fired, so Brown was limited to contact tasing. Further, Brown was on the ground when he gained the taser.

There are undoubtedly incidents in which officers may not safely re-deploy to a location farther away from a subject. Considerations include the suspect's ability to find and obtain nearby items as weapons, threats to bystanders, the ability to flee, the potential to barricade, and vulnerability of officers as they move, among others. However, circumstances here suggested re-deployment might have been an effective tactical alternative.

6. Affect a team take down of the suspect.

Another alternative tactic after disengaging would be use of a team take-down. Once a sufficient number of officers (5, 6 or more) arrived on scene, they could have approached Brown as a group and overwhelmed him by mass and number.

Brown may well have been able to contact tase at least one officer, but (as already discussed above) a minimal result would be expected. Additionally, with a large number of officers, Brown would likely be disarmed quickly and not able to administer a prolonged contact tase.

The team take down might be particularly effective since Brown was primarily resisting, but not attacking.

7. Purchase and deploy yellow tasers.

None of the civilian witnesses to the shooting reported seeing a taser in Brown's possession. Due to the taser's relatively small size, it may be difficult to observe a taser-sized object in a person's hand. Obtaining brightly colored tasers might improve the ability of others to see the taser, and has other benefits as well.

RPD uses distinctive paint color to identify “less than lethal” shotguns. The marking primarily serves to identify to officers which weapon to use, since the shotguns are actually the same as those used for lethal rounds.

Deploying yellow tasers would serve a similar purpose. This incident reminds that suspects can end up possessing police tasers. While a taser pointed at an officer presents a serious threat to incapacitate the officer (thereby giving access to the officer’s handgun), it is nonetheless preferable to distinguish a taser from a handgun.

A suspect with a taser who is 30 feet or more from an officer does not present an immediate threat. However, a suspect who is holding a taser 30 feet or more from officers might be mistakenly believed to be holding a handgun, resulting in unnecessary use of lethal force by police.

The distinctive yellow coloring, readily available from the manufacturer, is preferable to avoid confusing a taser with a handgun. Conversely, there is no readily identifiable benefit to deploying black tasers,

8. Incorporate tasers into existing “gun take away” training.

In training provided by RPD to the CPRC, police personnel reported that taser take-away training is not currently an aspect of training. However, officers do receive hands-on training in gun “take-aways,” or training in how to disarm a suspect who points a firearm at any officer.

The current taser deployed by RPD resembles a firearm in size and design, although the effective range and capability for injury is considerably less. Also, tasers and similar shock devices are available for sale to the general public, and officers face an increasing likelihood of being confronted with hostile taser use. It would seem likely that certain gun take-away tactics could be effectively used for taser take-aways.

The CPRC suggests that RPD explore the possibility of including tasers as part of the gun take-away training. At a minimum, the training should be developed to consider defensive responses to tasers being wielded against an officer, with focus on non-lethal responses and tactics.

9. Develop a structured method for DNA swabbing of evidence.

Evidence Tech Ellis took a single swab of Ellefson’s taser for DNA testing. Ellis’ report stated that the handle and frame were swabbed. Subsequent testing of the swab resulted in DNA consistent with Brown as a potential donor.

However, the fact that swabs were not individually taken from separate locations on the taser was problematic. Because Ellefson used his taser in direct contact with Brown, it is reasonable that Brown’s DNA could be found on the contact portion of the taser. Had Brown been holding the taser and pointing it at officers, it would be reasonable to find Brown’s DNA on the trigger or handle end of the frame.

The inability to identify the source of the DNA on the taser rendered the information about the DNA sample to be of little value.

Developing a more restrictive and structured process for swabbing evidence would likely produce results of greater value to investigators.

10. Improve response time by hiring more police officers.

The Commission believes that had more officers been available to respond to the incident sooner, police may have been better able to gain control of Mr. Brown. A recommendation is made to increase the number of police officers per 1,000 residents in the City of Riverside to improve RPD's ability to provide police response.

Closing:

The Commission offers its empathy to the community members and City employees who were impacted by this tragic incident. However, the Commission hopes that this incident does provide an opportunity to improve the ability of the RPD and the City to respond to similar dangerous and demanding situations, with safer outcome for all.